

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the D.C. Health Occupations Revision Act of 1985, effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments of Chapter 46 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The purpose of the amendments is to clarify the educational and training requirements; simplify the application process by eliminating the requirement to provide proof of completing undergraduate science coursework; clarify rules for medical record retention and release; clarify the rules for practice by postgraduate physicians; provide for acceptance of credentialing services.

Chapter 46 (Medicine) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 4600.3 is amended as follows:

4600.3 The Board shall only accept applications for licensure by one of the following means notwithstanding anything in Chapter 40 to the contrary:

- (a) National examination;
- (b) Waiver of national examination;
- (c) Reactivation of an inactive license;
- (d) Reinstatement of an expired, suspended, or revoked license; or
- (e) Eminence pursuant to D.C. Official Code § 3-1205.09a (2001).

A new subsection 4600.9 is added to read as follows:

An applicant or licensee shall communicate with the Board through typed or legibly written documentation. Any applicant or licensee who fails to submit typed or legibly written documents, as determined by the Board, shall have those documents returned to him or her.

Section 4602.1 is amended as follows:

- 4602.1 An applicant for licensure by examination educated in a foreign country other than Canada, shall furnish proof satisfactory to the Board that the applicant successfully completed educational and training requirements pursuant to § 4603.

Section 4602.2 is amended as follows:

- 4602.2 Pursuant to § 4602.1 and § 504(e) of the Act, D.C. Official Code § 3-1205.04(e) (2001) applicants shall meet the following requirements:
- (a) Two years of premedical studies at an accredited institution; and
 - (b) The equivalent of four (4) years of instruction and training in an accredited medical school and receipt of a degree of Doctor of Medicine or Doctor of Osteopathy.

Section 4602.5 is amended as follows:

- 4602.5 An applicant shall arrange for certified transcripts of the applicant's medical education records to be sent directly from the educational institutions to the Board or its designees.

Section 4603.2 is repealed.

Section 4603.6 is amended as follows:

- 4603.6 An applicant shall arrange for a certified transcript of the applicant's medical education record to be sent directly from the educational institution to the Board or its designees, except as provided by §4603.8.

Section 4605.13 is amended as follows:

- 4605.13 An applicant shall complete all remaining portions of the USMLE within seven (7) years after passing Step 1 or Step 2 of the examination. However, the seven (7) year time frame may be extended at the discretion of the Board.

Section 4607.3 is amended as follows:

- 4607.3 The Board may approve continuing education program and activities for Category 1 credit, according to the following conditions:
- (a) The programs and activities meet the requirements of §§ 4607.1 and 4607.2; and

- (b) The programs and activities are through providers approved by:
 - (1) The Accreditation Council for Continuing Medical Education (ACCME);
 - (2) A state medical society; or
 - (3) A sponsoring organization or the American Osteopathic Association (AOA) that awards the program or activity with an American Medical Association Physicians Recognition Award (AMA/PRA).

Section 4607.4 is repealed.

Section 4611.4 is amended as follows:

- 4611.4 A postgraduate physician may practice medicine in a clinical training program approved by the ACGME, or the Board if the graduate meets the following requirements:

Section 4611.7 is amended as follows:

- 4611.7 A postgraduate physician may practice pursuant to this section for a maximum of five (5) years in a postgraduate clinical training program if the postgraduate physician has a valid agreement with the institution, organization, or agency sponsoring the clinical training program:
- (a) The five (5) year period for graduates of U.S. and Canadian medical schools shall begin with the graduation from medical school; and
 - (b) The five (5) year period for graduates of foreign medical schools, other than Canadian medical schools, shall begin at the beginning of an approved U.S. postgraduate training program.

Section 4611.8 is amended as follows:

- 4611.8 A postgraduate physician shall obtain a license to practice medicine in the District after five (5) years or the completion of a postgraduate clinical training program, which ever comes first.

Section 4611.9 is amended as follows:

- 4611.9 A student or a postgraduate physician shall identify himself or herself as such at all times when practicing medicine.

Section 4611.10 is amended as follows:

A student or postgraduate physician shall comply with the standards of conduct for a licensed physician set forth in § 4612.

Section 4611.11 is amended as follows:

- 4611.11 A student or postgraduate physician may be disciplined for conduct that violates the Act or this chapter. The Board may deny an applicant a license, or take other disciplinary action against a student or postgraduate physician who is found to have violated the Act or this chapter, in accordance with Chapter 41 of this title.

Section 4611.12 is amended as follows:

- 4611.12 If the Board finds that a student or postgraduate physician has violated the Act or this chapter, the Board may, in addition to any other disciplinary action permitted by the Act, revoke, suspend, or restrict the privilege of the student or postgraduate physician to practice.

Section 4611.13 is amended as follows:

- 4611.13 For purposes of this section, "postgraduate physician" means a person who holds a degree in medicine or osteopathy, who is enrolled in a postgraduate clinical training program prior to licensure in any jurisdiction in the United States.

Section 4612.1 is amended as follows:

- 4612.1 A licensed physician shall maintain a record for each patient that accurately reflects the evaluation and treatment of each patient, these records shall be kept for three (3) years after last seeing the patient, or three (3) years after a minor patient reaches eighteen (18) years of age.

Section 4612.2 is amended as follows:

- 4612.2 Subject to §§ 4612.3 and 4612.4, a licensed physician shall provide to a patient or the patient's representative a copy of the patient's medical record at the request of the patient or the patient's representative within 30 days of the request according to the following:

- (a) A licensed physician may provide a summary report of the patient's medical record in lieu of copying the record if the patient consents.
- (b) A licensed physician may charge a reasonable fee for duplicating records and the fee may be required prior to providing the records in non-emergency situations.

Section 4612.8 is amended as follows:

A licensed physician shall conform to the prevailing standards of acceptable medical practice as determined by the Board or a peer review panel appointed by the Board.

A new section 4613 is added to read as follows:

4613 CREDENTIALING

- 4613.1 The Board may accept credentialing documentation from commercial or professional credentialing services that are certified as primary sources by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or other organizations the Board approves in its discretion.
- 4613.2 Any credentialing organizations that desire to provide services to applicants shall be pre-approved by the Board.
- 4613.3 The Board may deny approval of any credentialing organizations through its discretion for the following reasons:
 - (a) The documents submitted for pre-approval are of poor quality;
 - (b) The organization has lost its certification as a primary source; and
 - (c) The Board is unable to verify the accuracy or authenticity of the credentials provided by the organization.

All persons wishing to comment on the final rule making shall submit written comments no later than thirty (30) days after the date of publication of this notice in the D.C. Register to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, at the address listed above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (DOH), pursuant to the authority set forth in sections 5 and 21 of the Water Pollution Control Act of 1984, as amended, effective March 16, 1985, (D.C. Law 5-188; D.C. Official Code §§ 8-103.04 and 8-103.20), and Mayor's Order 98-50, April 15, 1998, hereby gives notice of the proposed amendment to Chapter 11 of Title 21 of the District of Columbia Municipal Regulations (DCMR), (Water Quality Standards), in not less than sixty (60) days from publication of this notice in the D.C. Register. This rulemaking replaces 21 DCMR Chapter 11, Water Quality Standards, §§ 1100 to 1106, 1158 and 1199. Ground water regulations at §§ 1151 to 1157 are not being amended.

DOH conducted a triennial review of the water quality standards as required by the Water Pollution Control Act of 1984 and the Federal Clean Water Act. On May 30, 2003, DOH published a notice in the D.C. Register that it was initiating the triennial review of the water quality standards, and requesting public input on issues of concern. Electronic notice was also sent directly to interested parties identified by DOH. DOH carefully considered the initial comments solicited from the public for this rulemaking. This proposed rulemaking revises the criteria for the classes of beneficial uses of the District water by adding narrative criteria for Class C waters; adds numeric criteria for an additional 34 constituents including E. coli; and updates the numeric criteria for over 100 constituents. The proposed rulemaking adds new definitions for adverse natural conditions, anadromous, aquatic life, consumption of fish and shellfish, navigation, semi-anadromous, short term degradation, tidally influenced waters, wildlife, and for abbreviations CaCO₃, CF, mg N/L, and MPN. The rulemaking clarifies definitions for background water quality, current use, load or loading, primary contact recreation, and waters of the District, and makes typographical corrections.

All persons desiring to comment on the proposed amendments to the water quality standards should file comments in writing not later than (30) days after the publication of this notice in the D.C. Register. Comments should be labeled "Triennial Review of the Water Quality Standards" and filed with the Department of Health, Water Quality Division, 51 N Street, N. E., 5th Floor, Washington D.C. 20002, Attention: Jerusalem Bekele, or by e-mail to jerusalem.bekele@dc.gov. The public may also present its views on the proposed amendments to the water quality standards at a public hearing. Notice of this public hearing will be published in the D.C. Register.

Title 21 of the District of Columbia Municipal Regulations, Chapter 11, Water Quality Standards, is amended as follows:

A. Sections 1100 to 1106 are amended to read as follows:

1100 PURPOSE AND SCOPE

1100.1 This chapter establishes the revised Water Quality Standards (WQS) for the

waters of the District of Columbia, as authorized by section 5 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.*).

1101 SURFACE WATERS

1101.1 For the purposes of water quality standards, the surface waters of the District shall be classified on the basis of their (i) current uses, and (ii) future uses to which the waters will be restored. The categories of beneficial uses for the surface waters of the District shall be as follows:

Categories of Uses That

Determine Water Quality Standards

Classes of Water

Primary contact recreation	A
Secondary contact recreation and aesthetic enjoyment	B
Protection and propagation of fish, shellfish and wildlife	C
Protection of human health related	D
to consumption of fish and shellfish	
Navigation	E

1101.2 The surface waters of the District are designated for beneficial use classes according to the categories delineated in subsection 1101.1 as follows:

CLASSIFICATION OF THE DISTRICT'S WATERS

<u>Surface Waters of the District</u>	<u>USE CLASSES</u>	
	<u>Current Use</u>	<u>Designated Use</u>
Potomac River	B, C, D, E	A, B, C, D, E
Potomac River tributaries (except as listed below)	B, C, D	A, B, C, D
Battery Kemble Creek	B, C, D	A, B, C, D
C & O Canal	B, C, D, E	A, B, C, D, E
Rock Creek	B, C, D, E	A, B, C, D, E
Rock Creek tributaries	B, C, D, E	A, B, C, D, E
Tidal Basin	B, C, D, E	A, B, C, D, E
Washington Ship Channel	B, C, D, E	A, B, C, D, E
Oxon Run	B, C, D	A, B, C, D

CLASSIFICATION OF THE DISTRICT'S WATERS

<u>Surface Waters of the District</u>	<u>USE CLASSES</u>	
	<u>Current Use</u>	<u>Designated Use</u>
Anacostia River	B, C, D, E	A, B, C, D, E
Anacostia River tributaries (except as listed below)	B, C, D	A, B, C, D
Hickey Run	B, C, D	B, C, D
Watts Branch	B, C, D	B, C, D
Wetland	C, D	C, D

1101.3

The Director may remove a designated use, establish a partial use, or establish sub-categories of a use for a particular surface water segment or body if a use attainability analysis can demonstrate that attaining the designated use is not feasible because:

- (a) Naturally occurring pollutant concentrations prevent the attainment of the use;
- (b) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating the District's water conservation requirements to enable uses to be met;
- (c) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
- (d) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or, to operate the modification in a way that would result in the attainment of the use;
- (e) Physical conditions related to the natural features of the waterbody, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or
- (f) Controls more stringent than those required by sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread economic and social impact.

- 1101.4 A designated use specified in section 1101 may not be removed and a partial use, that involves the removal of the designated use, may not be established if:
- (a) The use is actually attained in the surface water segment or body on or after November 28, 1975, unless a use requiring more stringent criteria is added, or
 - (b) The uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the Federal Clean Water Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.
- 1101.5 If a permittee requests the Director to conduct a use attainability analysis and provides a reasonable basis for the need, the Director shall:
- (a) Conduct a public meeting in the watershed of the affected segment or waterbody to inform the public of the nature of the use change requested and the basis of the request and solicit the opinions and views of the public prior to determining whether to conduct a use attainability analysis;
 - (b) Inform the permittee and the public of the decision;
 - (c) Inform the permittee of the approximate costs of the analysis and the schedule and the permittee shall provide payment as specified by the Director for the analysis;
 - (d) Not allow the permittee to perform the analysis;
 - (e) Form an advisory group of citizens and affected parties who will meet periodically during the course of the study;
 - (f) Hold a public hearing concerning the preliminary finding of the use attainability analysis prior to concluding the study;
 - (g) Submit the analysis to the EPA for review and approval, if it is determined that a modification or change in the uses of the segment or waterbody is justified; and
 - (h) Modify or remove the use in accordance with federal and District procedures for revising water quality standards upon receipt of approval by the EPA.

1102 ANTIDEGRADATION POLICY

- 1102.1 **TIER I:** Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- 1102.2 **TIER II:** If the water quality of the surface waters of the District exceeds the water quality criteria necessary to sustain the existing uses, those waters shall be maintained at that quality. The water quality will not be allowed to degrade unless the District finds, after full satisfaction of the intergovernmental coordination and public participation of the District's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing the degradation to lower water quality, the District shall ensure water quality adequate to protect existing uses fully. Further, the District shall ensure that the highest statutory and regulatory requirements for all new and existing point sources and all cost effective and reasonable best management practices for nonpoint source control.
- 1102.3 **TIER III:** Where high quality waters constitute an outstanding national resource, such as waters of the national and District parks and wildlife refuges and waters of exceptional recreational or ecological significance, those waters shall be designated Outstanding National Resource Waters (ONRW) and the water quality in the ONRW shall be maintained, protected and designated as below:
- (a) New point and nonpoint source discharges, treated or otherwise, shall be prohibited in these segments;
 - (b) Increases in loadings or new pollutants from existing point and nonpoint source discharges shall be prohibited in these segments;
 - (c) Short-term degradation of the water quality shall be permitted after the permittee provides an opportunity for public participation; and submits to the Department a report that describes the matter on which the public was consulted; summarizes the views, significant comments, criticisms and suggestions of the public and other local and federal government agencies; and sets forth the specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public and other local and federal government agencies. However, all practical means of minimizing the degradation shall be implemented; and
 - (d) Designation of ONRWs shall be adopted after full satisfaction of the intergovernmental coordination of the District's agencies and public participation provisions of the District's continuing planning process as required in 40 CFR Part 130.

- 1102.4 **SPECIAL WATERS OF THE DISTRICT OF COLUMBIA (SWDC):** Any segment or segments of the surface waters of the District that are of water quality better than needed for the current use or have scenic or aesthetic importance shall be designated as Special Waters of the District of Columbia (SWDC). The water quality in SWDC designated segments of the District's surface waters shall be maintained at or above the current level by implementing the following:
- (a) Existing nonpoint source discharges, storm water discharges and storm sewer discharges to SWDC segments shall be controlled through implementation of best management practices and regulatory programs;
 - (b) Construction or development projects, such as roads, bridges, and bank stabilization of the streams in which a SWDC designated segment is located, which may lead to pollution of the water, shall be permitted on a case-by-case basis to ensure that there are no long-term adverse water quality effects and that no impairment of the designated uses of the segment occurs; or
 - (c) Short term degradation of water quality in a SWDC segment due to construction projects may be permitted provided that prior notice is given to the public and other local and federal government agencies, and provided that the builder of the construction project submits a report to the Department which summarizes the views, significant comments, criticisms and suggestions of the public and other local and federal government agencies; and sets forth the specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public and other local and federal government agencies.

1102.5 The following waters of the District shall be designated as SWDC segments:

- (a) Rock Creek and its tributaries, and
- (b) Battery Kemble Creek and its tributaries.

1103 WETLANDS

1103.1 In a wetland, the numerical and the narrative criteria shall be applied to the column of water above the wetland in accordance with the designated use.

1103.2 Wetlands with rooted vascular aquatic vegetation, except those specifically constructed or created as waste water treatment devices and except as provided in D.C. Official Code § 8-103.03(d) and D.C. Official Code § 8-103.06(a)(3), shall be protected from significant adverse hydrologic modifications, excessive sedimentation, deposition of toxic substances in toxic amounts, nutrient imbalances, and other adverse anthropogenic impacts.

1104 STANDARDS

- 1104.1 The surface waters of the District shall be free from substances in amounts or combinations that do any one of the following:
- (a) Settle to form objectionable deposits;
 - (b) Float as debris, scum, oil, or other matter to create a nuisance;
 - (c) Produce objectionable odor, color, taste, or turbidity;
 - (d) Cause injury to, are toxic to, or produce adverse physiological or behavioral changes in humans, plants, or animals;
 - (e) Produce undesirable or nuisance aquatic life or result in the dominance of nuisance species; or
 - (f) Impair the biological community that naturally occurs in the waters or depends on the waters for its survival and propagation.
- 1104.2 For the waters of the District with multiple designated uses, the most stringent standards or criteria shall govern.
- 1104.3 Class A waters shall be free of discharges of untreated sewage, litter and unmarked submerged or partially submerged man-made structures that would constitute a hazard to the users of Class A waters.
- 1104.4 The aesthetic qualities of Class B waters shall be maintained. Construction, placement or mooring of facilities not primarily and directly water oriented is prohibited in, on, or over Class B waters unless:
- (a) The facility is for the general public benefit and service, and
 - (b) Land based alternatives are not available.
- 1104.5 Class C streams shall be maintained to support aquatic life and shall not be placed in pipes.
- 1104.6 Within tidally influenced Class C waters, concentrations of chlorophyll *a* in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions or otherwise render tidal waters unsuitable for designated uses.

1104.7 Class E waters shall be free of unmarked submerged or partially submerged man-made objects that pose a hazard to users of these waters.

1104.8 Unless otherwise stated, the numeric criteria that shall be met to attain and maintain designated uses are as follows (Tables 1 through 3):

Table 1

Constituent	Criteria for Classes		
	A	B	C
Bacteriological (MPN/100 mL)			
E. coli ¹			
Geometric Mean (Maximum 30 day geometric mean for 5 samples)	126		
Single Sample Value	410		
Fecal coliform ² (Maximum 30 day geometric mean for 5 samples)	200	1000	
Physical			
Dissolved oxygen ³ (mg/L)			
February 1 through May 31			
7-day mean			6.0
Instantaneous minimum			5.0
June 1 through January 31			
30-day mean			5.5
7-day mean			4.0
Instantaneous minimum ⁴			3.2
Temperature (°C)			
Maximum			32.2
Maximum change above ambient			2.8
PH			
Greater than	6.0	6.0	6.0
And less than	8.5	8.5	8.5
Turbidity increase above ambient (NTU)	20	20	20
Secchi Depth ^{3,5} (m)(seasonal segment average)			
April 1 through October 31			0.8
Total dissolved gases (maximum % saturation)			110
Hydrogen sulfide (maximum µg/L)			2.0
Oil & grease (mg/L)			10.0
Biological			
Chlorophyll a ^{3,5} (µg/L)(seasonal segment average)			
July 1 through September 30			25

Notes:

¹ This criterion shall apply to E. coli bacteria determined by the Director to be of non-

wildlife origin based on best scientific judgment using available information. The geometric mean criterion shall be used for assessing water quality trends and for permitting. The single sample value criterion shall be used for assessing water quality trends only.

² Fecal coliform shall continue to be used as a standard until December 31, 2007.

³ Attainment of the dissolved oxygen, water clarity and Chlorophyll *a* water quality criteria that apply to tidally influenced Class C waters will be determined following the guidelines documented in the 2003 U.S. Environmental Protection Agency publication: Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll *a* for the Chesapeake Bay and its Tidal Tributaries, EPA-903-R-03-002, April 2003.

⁴ At temperatures greater than 29°C, in tidally influenced waters, an instantaneous minimum dissolved oxygen concentration of 4.3 mg/L will apply.

⁵ Shall apply to tidally influenced waters only.

Table 2

Constituent ¹	Criteria for Classes		
	C		D ²
Trace metals and inorganics in µg/L, except where stated otherwise (see Notes below)	CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Ammonia, total mg N/L	See Note 7	See Note 8	
Antimony, dissolved			640
Arsenic ³ , dissolved	150	340	0.14c
Cadmium ^{4,5} , dissolved	[I] ^{CF}	[I.A] ^{CF}	
Chlorine, total residual	11	19	
Chromium ⁴ , hexavalent, dissolved	11 ^{CF}	16 ^{CF}	
Chromium ^{4,5} , trivalent, dissolved	[II] ^{CF}	[II.A] ^{CF}	
Copper ^{4,5} , dissolved	[III] ^{CF}	[III.A] ^{CF}	
Cyanide, free	5.2	22	140
Iron, dissolved	1000		
Lead ^{4,5} , dissolved	[IV] ^{CF}	[IV.A] ^{CF}	
Mercury ⁴ , total recoverable	0.77	1.4	0.15
Methylmercury (mg/kg, fish tissue residue)			0.3
Nickel ^{4,5} , dissolved	[V] ^{CF}	[V.A] ^{CF}	4600
Selenium, total recoverable	5	20	4200
Silver ^{4,5} , dissolved		[VI] ^{CF}	65000
Thallium, dissolved			0.47
Zinc ^{4,5} , dissolved	[VII] ^{CF}	[VII] ^{CF}	26000

Notes:

¹ For constituents without numerical criteria, standards have not been developed at this time. However, the National Pollutant Discharge Elimination System (NPDES) permitting authority shall address constituents without numerical standards in NPDES permit actions by using the narrative criteria for toxics contained in these water quality standards.

² The Class D Human Health Criteria for metals will be based on Total Recoverable metals.

³ "c" after the Class D Human Health Criteria numeric value means that the criteria is based on carcinogenicity of 10^{-6} risk level.

⁴ Superscript "CF" means the criterion derived from the formula under Note 5 is multiplied by the conversion factor in **Table 2a** as specified in subsection 1105.10:

Table 2a. Conversion Factors

Constituent	CCC	CMC
Cadmium	$1.101672 - [(\ln \text{ hardness})(0.041838)]$	$1.136672 - [(\ln \text{ hardness})(0.041838)]$
Chromium III	0.860	0.316
Chromium VI	0.962	0.982
Copper	0.960	0.960
Lead	$1.46203 - [(\ln \text{ hardness})(0.145712)]$	$1.46203 - [(\ln \text{ hardness})(0.145712)]$
Mercury	0.85	0.85
Nickel	0.997	0.998
Silver	--	0.85
Zinc	0.986	0.978

⁵ The formulas for calculating the criterion for the hardness dependent constituents indicated above are as follows:

[I] The numerical CCC criterion for cadmium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.7409[\ln(\text{hardness})]-4.719)}$$

[I.A] The numerical CMC criterion for cadmium in $\mu\text{g/L}$ shall be given by:

$$e^{(1.0166[\ln(\text{hardness})]-3.924)}$$

[II] The numerical CCC criterion for trivalent chromium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8190[\ln(\text{hardness})]+0.6848)}$$

[II.A] The numerical CMC criterion for trivalent chromium in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8190[\ln(\text{hardness})]+3.7256)}$$

[III] The numerical CCC criterion for copper in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8545[\ln(\text{hardness})]-1.702)}$$

[III.A] The numerical CMC criterion for copper in $\mu\text{g/L}$ shall be given by:

$$e^{(0.9422[\ln(\text{hardness})]-1.700)}$$

[IV] The numerical CCC criterion for lead in $\mu\text{g/L}$ shall be given by:

$$e^{(1.2730[\ln(\text{hardness})]-4.705)}$$

[IV.A] The numerical CMC criterion for lead in $\mu\text{g/L}$ shall be given by:

$$e^{(1.2730[\ln(\text{hardness})]-1.460)}$$

[V] The numerical CCC criterion for nickel in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8460[\ln(\text{hardness})]+0.0584)}$$

[V.A] The numerical CMC criterion for nickel in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8460[\ln(\text{hardness})]+2.255)}$$

[VI] The numerical CMC criterion for silver in $\mu\text{g/L}$ shall be given by:

$$e^{(1.7200[\ln(\text{hardness})]-6.590)}$$

[VII] The numerical CCC criterion for zinc in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8473[\ln(\text{hardness})]+0.884)}$$

[VII.A] The numerical CMC criterion for zinc in $\mu\text{g/L}$ shall be given by:

$$e^{(0.8473[\ln(\text{hardness})]+0.884)}$$

⁶ Hardness in the equations (I) through (VII.A) in Note 5 above shall be measured as mg/L of Calcium Carbonate (CaCO_3). The minimum hardness allowed for use in those equations shall not be less than 25 mg/L, as CaCO_3 , even if the actual ambient hardness is less than 25 mg/L as CaCO_3 . The maximum hardness value allowed for use in those equations shall not exceed 400 mg/L, as CaCO_3 , even if the actual ambient hardness is greater than 400 mg/L as CaCO_3 .

⁷ Criteria Continuous Concentration (CCC) for Total Ammonia:

- (a) The CCC criterion for ammonia (in mg N/L) (i) shall be the thirty (30)-day average concentration for total ammonia computed for a design flow specified in subsection 1105.5; and (ii) shall account for the influence of the pH and temperature as shown in Table 2b and Table 2c. The highest four (4)-day average within the thirty (30)-day period shall not exceed 2.5 times the CCC.
- (b) The CCC criterion in **Table 2b** for the period March 1st through June 30th was calculated using the following formula, which shall be used to calculate unlisted values: $\text{CCC} = [(0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))] \times \text{MIN}(2.85, 1.45 \times 10^{0.028 \times (25-T)})$, where MIN indicates the lesser of the two values (2.85, $1.45 \times 10^{0.028 \times (25-T)}$) separated by a comma.
- (c) The CCC criterion in **Table 2c** for the period July 1st through February 28/29th,

was calculated using the following formula, which shall be used to calculate unlisted values: $CCC = [(0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))] \times [1.45 \times 10^{0.028 \times (25-MAX(T,7))}]$, where MAX indicates the greater of the two values (T,7) separated by a comma.

Table 2b. Total Ammonia (in milligrams of Nitrogen per liter) CCC criterion for various pH and temperatures for March 1st through June 30th:

pH	Temperature (°C)									
	0	14	16	18	20	22	24	26	28	30
6.50	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.60	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.70	6.44	6.44	5.86	5.15	4.52	3.98	3.42	3.00	2.64	2.32
6.80	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.90	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.00	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.10	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.20	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.30	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.40	4.73	4.73	4.30	3.97	3.49	3.06	2.69	2.37	2.08	1.83
7.50	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.60	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.70	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.80	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.90	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.00	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.10	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.20	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.30	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.40	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.50	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.60	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.70	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.80	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.208
8.90	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.00	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

Table 2c. Total Ammonia (in milligrams of Nitrogen per liter) CCC criterion for various pH and temperatures for July 1st through February 28th/29th:

pH	Temperature (°C)									
	0-7	8	9	10	11	12	13	14	15*	16*
6.50	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.60	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.70	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.80	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.90	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.00	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.10	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.20	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.30	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.40	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.50	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.60	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.70	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.80	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.90	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.00	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.10	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.20	2.91	2.73	2.56	2.4	2.25	2.11	1.98	1.85	1.74	1.63
8.30	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.40	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.50	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.990
8.60	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.70	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.80	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.90	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.00	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

*At 15°C and above, the criterion for July 1st through February 28th/29th is the same as the criterion for March 1st through June 30th.

⁸ Criteria Maximum Concentration (CMC) for Total Ammonia:

- (a) The CMC criterion for total ammonia (in mg N/L) (i) shall be the one (1)-hour average concentration for total ammonia, computed for a design flow specified in subsection 1105.5; and (ii) shall account for the influence of the pH as shown in Table 2d.
- (b) The CMC criterion was calculated using the following formula, which shall be used to calculate unlisted values: $CMC = [(0.411/(1+10^{7.204-pH})) + [58.4/(1+10^{pH-7.204})]]$.

Table 2d. Total Ammonia (in milligrams of Nitrogen per liter) CMC criterion for various pH:

pH	CMC	pH	CMC	pH	CMC	pH	CMC
6.50	48.8	7.20	29.5	7.90	10.1	8.60	2.65
6.60	46.8	7.30	26.2	8.00	8.40	8.70	2.20
6.70	44.6	7.40	23.0	8.10	6.95	8.80	1.84
6.80	42.0	7.50	19.9	8.20	5.72	8.90	1.56
6.90	39.1	7.60	17.0	8.30	4.71	9.00	1.32
7.00	36.1	7.70	14.4	8.40	3.88		
7.10	32.8	7.80	12.1	8.50	3.20		

Table 3

Constituent¹	CAS Number	Criteria for Classes		
		C		D²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics (µg/L)				
Acrolein	107028	10.0		290
Acrylonitrile	107131	700.0		0.25,c
Aldrin	309002	0.4	3.0	0.000050,c
Benzene	71432	1000		51.0,c
Carbon Tetrachloride	56235	1000		1.6,c
Chlordane	57749	0.0043	2.4	0.00081,c
Chlorinated benzenes (except Di)		25.0		
Chlorobenzene	108907			1600
1,2-Dichlorobenzene	95501	200		1300
1,3-Dichlorobenzene	541731	200		960
1,4-Dichlorobenzene	106467	200		190
Hexachlorobenzene	118741			0.00029,c
Pentachlorobenzene	608935			1.5
1,2,4,5-Tetrachlorobenzene	95943			1.1
1,2,4-Trichlorobenzene	120821			70
Chlorinated ethanes		50		
1,2-Dichloroethane	107062			37.0,c
Hexachloroethane	67721			3.3,c
1,1,2,2-Tetrachloroethane	79345			4.0,c
1,1,2-Trichloroethane	79005			16.0,c
Chlorinated naphthalene				
2-Chloronaphthalene	91587	200		1600
Chlorinated phenols				
2-Chlorophenol	95578	100		150
2,4-Dichlorophenol	120832	200		290.0

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics (µg/L)				
Pentachlorophenol ³	87865	[I]	[I.A]	3.0,c
2,4,5-Trichlorophenol	95954			3600
2,4,6-Trichlorophenol	88062			2.4,c
Chloroalkyl ethers		1000		
Bis(2-Chloroethyl)Ether	111444			0.53,c
Bis(2-Chloroisopropyl)Ether	108601			65,000
Bis(Chloromethyl)Ether	542881			0.00029
3,3-Dichlorobenzidine	91941	10		0.028,c
Dichloroethylenes		1000		
1,1-Dichloroethylene	75354			7,100,c
1,2-Trans-Dichloroethylene	156605			10,000
1,2-Dichloropropane	78875	2000		15,c
Dichloropropenes		400		
1,3-Dichloropropene	542756			21
Dieldrin	60571	0.056	0.24	0.000054,c
2,4-Dimethylphenol	105679	200		850
2,4-Dinitrotoluene	121142	33		3.4,c
Dioxin (2,3,7,8-TCDD)	1746016			0.0000000051,c
1,2-Diphenylhydrazine	122667	30		0.20,c
Endosulfan		0.056	0.22	89
Alpha-Endosulfan	959988	0.056	0.22	89
Beta-Endosulfan	33213659	0.056	0.22	89
Endosulfan sulfate	1031078			89
Endrin	72208	0.036	0.086	0.060
Endrin aldehyde	7421934			0.30
Ethylbenzene	100414	40		2,100
Halomethanes		1000		
Bromoform	75252			140,c
Chloroform	67663	3000		470.0,c
Chlorodibromomethane	124481			13.0,c
Dichlorobromomethane	75274			17.0,c
Methyl Bromide	74839			1,500
Methyl Chloride	74873			
Methylene chloride	75092			590,c
Heptachlor	76448	0.0038	0.52	0.000079,c
Heptachlor epoxide	1024573	0.0038	0.52	0.000039,c
Hexachlorobutadiene	87683	10		18.0,c
Hexachlorocyclohexane				
alpha-BHC	319846			0.0049,c

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics (µg/L)				
beta-BHC	319857			0.017,c
gamma-BHC (Lindane)	58899	0.08	0.95	1.8,c
Hexachlorocyclopentadiene	77474	0.5		1,100
Isophorone	78591	1000		960,c
Manganese	7439965			100
Methoxychlor	72435	0.03		
Mirex	2385855	0.001		
Naphthalene	91203	600		
Nitrobenzene	98953	1000		690
Nitrophenols		20		
2-Methyl-4,6- Dinitrophenol	534521			280
2,4-Dinitrophenol	51285			5,300
Dinitrophenols	25550587			5,300
Nitrosamines		600		1.24
N-Nitrosodibutylamine	924163			0.22
N-Nitrosodiethylamine	55185			1.24
N-Nitrosodimethylamine	62759			3.0,c
N-Nitrosodi-n-Propylamine	621647			0.51,c
N-Nitrosodiphenylamine	86306			6.0,c
N-Nitrosopyrrolidine	930552			34,c
Organochlorides				
4,4'-DDD	72548	0.001	1.1	0.00031,c
4,4'-DDE	72559	0.001	1.1	0.00022,c
4,4'-DDT	50293	0.001	1.1	0.00022,c
Organophosphates				
Guthion	86500	0.01		
Malathion	121755	0.1		
Parathion	56382	0.013	0.065	
Phenol	108952			1,700,000
Phthalate esters		100		
Bis(2-Ethylhexyl) Phthalate	117817			2.2,c
Butylbenzyl Phthalate	85687			1,900
Diethyl Phthalate	84662			44,000
Dimethyl Phthalate	131113			1,100,000
Di-n-Butyl Phthalate	84742			4,500
Polychlorinated biphenyls ⁴		0.014		0.000064,c
Polynuclear aromatic hydrocarbons				
Acenaphthene	83329	50		990
Acenaphthylene	208968			

Constituent ¹	CAS Number	Criteria for Classes		
		C		D ²
		CCC 4-Day Avg	CMC 1-Hour Avg	30-Day Avg
Organics (µg/L)				
Anthracene	120127			40,000
Benzidine	92875	250		0.00020,c
Benzo(a)Anthracene	56553			0.018,c
Benzo(a)Pyrene	50328			0.018,c
Benzo(b)Fluoranthene	205992			0.018,c
Benzo(k)Fluoranthene	207089			0.018,c
Chrysene	218019			0.018,c
Dibenzo(a,h) Anthracene	53703			0.018,c
Fluoranthene	206440	400		140.0
Fluorene	86737			5,300
Indeno(1,2,3-cd) Pyrene	193395			0.018,c
Phenanthrene	85018			
Pyrene	129000			4,000
Tetrachloroethylene	127184	800		3.3,c
Toluene	108883	600		15000
Toxaphene	8001352	0.0002	0.73	0.00028,c
Tributyltin (TBT)	--	0.072	0.46	
Trichloroethylene	79016	1000		30.0,c
Vinyl chloride	75014			2.4,c

Notes:

¹ For constituents without numerical criteria, standards have not been developed at this time. However, permit writers will address these constituents in NPDES permit actions using the narrative criteria for toxics contained in these water quality standards.

² "c" after the Class D Human Health Criteria numeric value means that the criteria is based on carcinogenicity of 10⁻⁶ risk level.

³ The formulas for calculating the concentrations of substances indicated above are as follows:

[I] The numerical CCC criterion for pentachlorophenol in µg/L shall be given by:

$$e^{(1.005(\text{pH}) - 5.134)}$$

[I.A] The numerical CMC criterion for pentachlorophenol in µg/L shall be given by:

$$e^{(1.005(\text{pH}) - 4.869)}$$

⁴ The Polychlorinated biphenyls (PCB) criterion applies to total PCBs (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)

1105 IMPLEMENTATION AND APPLICABILITY

1105.1 Where the discharge of pollutants in quantities that prevent the attainment of, or violates, the surface water quality standards, the Director may grant a variance from a WQS that is the basis of a water quality-based effluent limitation included in a National Pollutant Discharge Elimination System (NPDES) permit. A WQS variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not affect, or require the Director to modify, the corresponding water quality standard for the waterbody as a whole. A variance may be granted only if the discharger can justify every three (3) years through a public hearing process that attaining the WQS is not feasible because at least one (1) of the following conditions exists:

- (a) Irretrievable and irreversible conditions that prevent the attainment of the standards;
- (b) The application of technology sufficient to attain the standards is more stringent than that required by sections 301(b) and 306 of the Federal Clean Water Act, and the application of the technology would result in substantial and widespread adverse economic and social impacts; or
- (c) One or more of the reasons specified in subsection 1101.3.

1105.2 The Director shall not grant a variance from water quality standards if:

- (a) The variance will result in loss of protection for an existing use, or
- (b) The permittee fails to make the demonstrations required under subsection 1105.1.

1105.3 Variances approved by the Director shall include all permit conditions needed to implement those parts of the variance so approved. The permit conditions shall, at a minimum, require:

- (a) Compliance with an initial effluent limitation that, at the time the variance is granted, represents the level currently achievable by the permittee, and that is no less stringent than that achieved under the previous permit;
- (b) That reasonable progress be made toward attaining the water quality standards for the waterbody as a whole through appropriate conditions; and
- (c) A provision that allows the permitting authority to reopen and modify the permit based on any triennial water quality standards revisions to the variance.

- 1105.4 The Director shall establish and incorporate into the water quality certification of the permittee's discharge permit, all conditions needed to implement the variance as determined pursuant to this section. A variance may be renewed, subject to the requirements of this section. As part of any renewal application, the permittee shall again demonstrate that attaining WQS is not feasible based on the requirements of subsection 1105.1. The permittee's application shall also contain information concerning its compliance with the conditions incorporated into its permit as part of the previous variance pursuant to this section. The Director may deny renewal of a variance if the permittee did not substantively comply with the conditions of the previous variance.
- 1105.5 The design flow to be used for establishing permit limitations for discharges to the District waters shall be as follows:
- (a) The numerical criteria for classes A, B, and C(CCC), as delineated in subsection 1104.8, shall not apply at flows less than the average seven-day (7-day) low flow, which has a probability of occurrence of once in ten (10) years;
 - (b) The numerical criteria for class C(CMC), as delineated in subsection 1104.8, shall not apply at flows less than the average one-day (1-day) low flow, which has a probability of occurrence of once in ten (10) years; and
 - (c) For carcinogenic pollutants under class D, as delineated in subsection 1104.8, the design flow shall be the harmonic mean flow, and for noncarcinogenic pollutants under class D the design flow shall be the average thirty-day (30-day) low flow, which has the probability of occurrence of once in five (5) years. The categorization of pollutants to be carcinogenic or non carcinogenic is shown under the Class D column for Human Health Criteria.
 - (d) The numerical criteria for clarity shall not apply at flows greater than the long-term seasonal average flow.
 - (e) For chlorophyll a, the design flow shall be the average seasonal flow for July 1 through September 30.
- 1105.6 High flow conditions in the District of Columbia waters are defined as below:
- (a) For the Potomac River, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory

to the Potomac River, or

- (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (b) For the Anacostia River, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory to the Anacostia River, or
 - (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (c) For Rock Creek and tributaries, the following conditions shall be considered a high flow:
 - (i) A flow that may result due to a rainfall with an average intensity greater than two-tenths of an inch (0.2") per hour for a period of one (1) hour in the portion of the District of Columbia contributory to Rock Creek, or
 - (ii) A flow equivalent to a three hundred percent (300%) increase in flow during a twenty-four (24) hour period.
- (d) For other tributaries to the Potomac and Anacostia Rivers, a flow equivalent to a five hundred percent (500%) increase in flow during a twenty-four (24) hour period, shall be considered a high flow.

1105.7 Mixing zones may be allowed for point source discharges of pollutants on a case-by-case basis, where it is demonstrated that allowing a small area impact will not adversely affect the waterbody as a whole. The following conditions shall apply:

- (a) In the nontidal waters the permissible size of the mixing zone shall be determined by the ability of organisms to pass through the mixing zone and the size of the receiving waterbody;
- (b) Mixing zones shall be free from discharged substances that will settle to form objectionable deposits; float to form unsightly masses; or produce objectionable color, odor, or turbidity;
- (c) A mixing zone, or two (2) or more mixing zones, shall not form a barrier to the movements of aquatic life nor cause significant adverse impact on

aquatic life in shallow areas that serve as a nursery;

- (d) The concentration of a substance in the mixing zone shall not be lethal to passing organisms, as determined by the appropriate EPA method;
- (e) Mixing zones shall be positioned in a manner that provides the greatest protection to aquatic life and the designated uses of the water;
- (f) Within the estuary, the cross-sectional area occupied by a mixing zone shall not exceed ten percent (10%) of the numerical value of the cross-sectional area of the waterway, and the width of the mixing zone shall not occupy more than one third (1/3) of the width of the waterway;
- (g) Within the estuary, mixing zones may move with the prevailing hydraulic and meteorological conditions;
- (h) The numerical standards for Criteria Continuous Concentration (CCC) in subsection 1104.8 must be met at the edge of the mixing zone and therefore the CMC criteria will be met within some portions of the mixing zone;
- (i) The mixing zone shall be implemented in accordance with the EPA Technical Support Document for Water Quality-Based Toxics Control, EPA-505-2-90-001, March 1991; and
- (j) The mixing zone shall be approved by the Director.

1105.8 Any permit issued pursuant to section 7 of the Water Pollution Control Act of 1984 (D.C. Official Code § 8-103.06) shall be based on the designated uses and other provisions of these water quality standards.

1105.9 When the Director requires a new water quality standard-based effluent limitation in a discharge permit, the permittee shall have no more than three (3) years to achieve compliance with the limitation, unless the permittee can demonstrate that a longer compliance period is warranted. A compliance schedule shall be included in the permit.

1105.10 The numerical criteria for dissolved cadmium, hexavalent chromium, trivalent chromium, copper, lead, nickel, silver, and zinc shall be calculated by multiplying the criteria for these metals as specified in Table 2 of § 1104.8 by the EPA Conversion Factors specified in Appendix B of the EPA National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047, November 2002. This conversion is required because the numerical values for these metals in Table 2 of this Chapter were established for total recoverable metals but are being used for dissolved metals.

1106 SITE SPECIFIC STANDARDS

- 1106.1 If requested, the Director may allow a site-specific study to change the numerical criteria when at least one (1) of the following conditions exists:
- (a) The species, or endangered species, at the site are more or less sensitive than those included in the national criteria data set; or
 - (b) Physical or chemical characteristics of the site alter the biological availability or toxicity of the chemical.
- 1106.2 If the criteria in subsection 1104.8 are found to be unsuitable for the District waters based on the conditions described in 1106.1, when requested to do so, the Director may adopt site-specific criteria for Class C waters, except for mercury and selenium, or for Class D waters, only when a site-specific study necessitates.
- 1106.3 When requested to do so, based on the conditions described in subsection 1106.1 and if warranted, the Director shall allow site-specific studies to generate scientific information regarding:
- (a) The Water Effect Ratio for metals specific to the District waters;
 - (b) The sensitivities of the aquatic organisms prevalent in the District;
 - (c) The toxicity of chemicals to the fish in the District waters and related human health effects; and
 - (d) Any other compelling factors that merit consideration for changing the numerical standards in subsection 1104.8.
- 1106.4 A person or persons planning to conduct a site-specific study shall submit a complete plan of study to the Director for approval, and the site-specific study shall be carried out only after the Director approves the study in writing, subject to the requirements set forth in section 1106.
- 1106.5 The Director shall provide advance notice to all discharge permittees and applicants for discharge permits prior to the initiation of any site-specific study.
- 1106.6 All site-specific studies and adoption of site-specific criteria shall be subject to the following requirements:
- (a) Once the Director has approved the study, it shall be concluded in accordance with the approved plan;

- (b) A person or persons conducting a site-specific study subject to subsection 1106.3 shall submit to the Director for review and approval all data, analyses, findings, reports and other information the Director deems necessary;
- (c) The Director shall seek review of the findings of the site-specific studies and other relevant information by the public as well as by appropriate local and federal government agencies and consider their concerns before adopting any less stringent site-specific criterion based on those findings; and
- (d) If the study concludes that a more stringent criterion is needed for Class C or D waters than provided in subsection 1104.8, then the standards shall be modified to reflect the more stringent level of protection.

1106.7 If a study is conducted to determine the Water Effect Ratio (WER) for metals and the criteria are in the dissolved form, the WER must be based on the dissolved fraction of the metals. If the study is conducted to determine the WER for metals and the criteria are in the total recoverable form, the WER must be based on the total recoverable fraction of the metals. If WERs are to be developed, EPA guidance Interim Guidance on Determination and Use of Water Effect Ratios for Metals, EPA-823-B-94-001, February 1994, shall be used and at a minimum, the following conditions shall be met unless the Director approves a deviation or alternate method:

- (a) If a WER study concludes that an existing criterion is not stringent enough then the criterion shall be made more stringent;
- (b) At least two (2) sensitive indicator species, a fish and at least one (1) invertebrate, shall be used to determine toxicity in laboratory water and water collected from the site;
- (c) The LC_{50} in the laboratory water must be comparable to the LC_{50} data developed by EPA;
- (d) Water samples collected from the site shall be representative of critical low flow. A minimum of eight (8) samples per location per season shall be evaluated;
- (e) Samples shall be taken at the edge of the mixing zone unless multiple discharges are involved. At least one (1) sample shall be reasonably well mixed with the flow of the receiving water or the sample shall be well outside the regulatory mixing zone;
- (f) Laboratory water shall be same as the water used by EPA and adjusted for

site water characteristics and hardness;

- (g) The trace metal shall be added in the form of a highly soluble inorganic salt;
- (h) The chemical and physical characteristics, both dissolved and total recoverable metal concentrations, hardness, pH, alkalinity, suspended solids, organic carbon, temperature, and specific metal binding ligands (where known to be important) and any other water quality characteristic that affects bioavailability and toxicity of the water should be monitored during the toxicity tests;
- (i) A WER that is large or that is based on highly variable tests may be rejected;
- (j) The WER shall be the geometric mean of the two (2) species; and
- (k) All chemical, biochemical, biological, and other appropriate analyses shall be conducted by EPA-approved methods.

1106.8 If a site-specific study is conducted to determine the Class D Human Health Criteria and related human health effects, at a minimum, the following information shall be incorporated:

- (a) Bioconcentration factors of the substances in the commonly consumed fish in the District;
- (b) Percent lipids in the commonly consumed fish in the District; and
- (c) Information regarding the consumption by the public of fish caught from the District waters.

1106.9 The determination of 1106.8 (a) and (b) shall be done by EPA-approved methods.

1106.10 The criteria, based on a site-specific study and information collected through the study, shall be calculated using relations developed by EPA Technical Support Document for Water Quality-Based Toxics Control, EPA-505-2-90-001, March 1991, minus the component for drinking water, as follows:

- (a) For noncarcinogens:

$$\text{NEW CRITERIA} = (\text{RfD} \times \text{WT}) / (\text{FC} \times \text{L} \times \text{FM} \times \text{BCF})$$

where RfD is the reference dose from the EPA Integrated Risk Information System (IRIS) database, WT is seventy (70) kilograms, FC is the daily fish

consumption by the exposed population in kilograms per day, L is the ratio of lipid fraction of fish tissue consumed to three percent (3%), FM is the food chain multiplier and BCF is the bioconcentration factor for fish with three percent (3%) lipid.

- (b) For carcinogens:

$$\text{NEW CRITERIA} = (\text{RL} \times \text{WT}) / (q1^* \times \text{FC} \times \text{L} \times \text{FM} \times \text{BCF})$$

where WT, FC, L, FM, and BCF are as stated above; RL is 10^{-6} and $q1^*$ is the carcinogenic potency factor from the EPA IRIS database.

1106.11 If the effluent limitation for a metal in a discharge permit is specified as "total recoverable", and the criterion for it in subsection 1104.8 is specified as "dissolved", either of the following two (2) approaches based on The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion, EPA-823-B-96-007, June 1996, may be used, subject to review and approval by the Director:

- (a) The criterion may be used as total recoverable for the purpose of establishing effluent limitations; or
- (b) A site-specific ratio between the dissolved and total recoverable metal may be developed by systematic monitoring and analysis of the effluent and of the receiving water at the edge of the mixing zone during periods that reflect the environmental conditions on which the permit was issued. This ratio shall incorporate considerations to avoid toxicity to aquatic organisms from deposition to the sediment outside of the mixing zone. The ratio of dissolved to total recoverable metal will then be used to determine the total recoverable effluent limits based on the dissolved metal criterion.

1106.12 The Director may establish additional requirements for adopting site-specific water quality standards.

B. Section 1158 is amended to read as follows:

1158 ENFORCEMENT

1158.1.1 This chapter shall be enforced pursuant to the Water Pollution Control Act of 1984, as amended, effective March 16, 1985, (D.C. Law 5-188; D.C. Official Code §§ 8-103.15, 8-103.16 and 8-103.17) and the Water Pollution Enforcement Regulations, (21 DCMR Chapter 22).

- 1158.2 All laboratory examinations of samples collected to determine compliance with these water quality standards shall be performed in accordance the procedures approved by the U.S. Environmental Protection Agency.
- 1158.3 All field analyses and measurements of water to determine compliance with these water quality standards shall be conducted in accordance with standard procedures specified by the Director.
- 1158.4 Nothing in these water quality standards shall be interpreted as alleviating any discharger from meeting more stringent water quality standards of downgradient jurisdictions.
- 1158.5 Primary contact recreation shall be prohibited in the Potomac and Anacostia Rivers and Rock Creek until such time as the standards in §1104.8 for Class A beneficial use are consistently maintained.

C. Section 1199 is amended to read as follows:

1199 DEFINITIONS

- 1199.1 When used in this chapter, the following terms shall have the meanings ascribed:

Acute toxic - the concentration of a substance that is lethal to fifty percent (50%) of the test organisms within ninety-six (96) hours, also referred to as the LC₅₀.

Adverse natural conditions - an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Ambient - those conditions existing before or upstream of a source or incidence of pollution.

Anadromous fish - fish that spend most of their lives in saltwater but migrate into freshwater tributaries to spawn.

Aquatic Life - all animal and plant life including, but not limited to, rooted underwater grasses found in the District waters.

Background water quality - the levels of chemical, physical, biological, and radiological constituents or parameters in the water upgradient of a facility, practice, or activity and which have not been affected by that facility, practice, or activity.

Best management practices (BMPs)— schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the waters of the District. BMPs also include practices found to be the most effective and practical means of preventing or reducing point and non-point source pollution to levels that are compatible with water quality goals.

Contamination - an impairment of water quality by biological, chemical, physical, or radiological materials which lowers the water quality to a degree that creates a potential hazard to the environment or public health or interferes with a designated use.

Criteria - any of the group of physical, chemical, biological, and radiological water quality parameters and the associated numerical concentrations or levels that compose the numerical standards of the water quality standards and that define a component of the quality of the water needed for a designated use.

CCC or Criteria Continuous Concentration - the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (four-day (4-day) average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

CMC or Criteria Maximum Concentration - the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time (one-hour (1-hour) average) without deleterious effects at a frequency that does not exceed more than once every three (3) years.

Consumption of Fish and Shellfish - the human ingestion of fish and shellfish, which are not chemically contaminated at a level that will cause a significant adverse health impact, caught from the District's waters.

Current use - the use that is generally and usually attained based on the water quality in the waterbody.

Department - the Department of Health, or its successor agency.

Designated use - the use specified for the waterbody in these water quality standards whether or not they are being attained.

Director - the Director of the Department, or his or her designee.

Early warning value - a concentration that is a percentage of or practical quantitation limit for a ground water quality criterion or enforcement standard.

EPA - U. S. Environmental Protection Agency.

Enforcement standard - the value assigned to a contaminant for the purpose of regulating an activity, which may be the same as the criterion for that contaminant.

Existing use - the use actually attained in the waterbody on or after November 28, 1975.

Federal Clean Water Act - the Federal Water Pollution Control Act, approved October 18, 1972 (86 Stat. 816; 33 U.S.C. § 1251 *et seq.*), as amended.

Ground water - underground water, excluding water in pipes, tanks, and other containers created or set up by people.

Harmonic mean flow - the number of daily flow measurements divided by the sum of the reciprocals of the flows. It is the reciprocal of the mean of the reciprocals.

High quality waters - waters of a quality that is better than needed to protect fishable and swimmable streams.

Landfill - a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading facility.

Landspreading disposal facility - a facility that applies sludge or other solid wastes onto the land or incorporates solid waste in the soil surface at greater than vegetative utilization and soil conditioners/immobilization rates.

LC₅₀ or lethal concentration - the numerical limit or concentration of a test material mixed in water that is lethal to fifty percent (50%) of the aquatic organisms exposed to the test material for a period of ninety-six (96) hours.

Load or Loading - the total quantity of a pollutant in a given period of time.

Mixing zone - a limited area or a volume of water where initial dilution of a discharge takes place and where numerical water quality criteria may be exceeded but acute toxic conditions are prevented from occurring.

MPN - a statistically derived estimate of the "Most Probable Number" of bacteria colonies in a volume of 100 ml water sample.

Narrative criteria - a condition that should not be attained in a specific medium to maintain a given designated use and is generally expressed in a "free from" format.

Navigation – the designated use for certain District waters. This designation applies to waters that are subject to the ebb and flow of the tides, or waters that are presently used, may have been used, or may be used for shipping, travel, and transportation of interstate or foreign commerce by vessel.

Nonpoint source - any source from which pollutants are or may be discharged other than a point source.

Numerical criteria - the maximum level of a contaminant, or the minimum level of a constituent, or the acceptable range of a parameter in water to maintain a given designated use.

Permit or Permitted - a written authorization issued or certified by the Director under pertinent laws and regulations for an activity, facility or entity to discharge, treat, store, or dispose of materials or wastes.

Point of compliance - the point or points where the water quality enforcement standard or criterion must not be exceeded.

Point source - any discrete source of quantifiable pollutants, including a municipal treatment facility discharge, residential, commercial or industrial waste discharge or a combined sewer overflow; or any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which contaminants are or may be discharged.

Pollution - the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

Pollutant - any substance that may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, or biological integrity of the waters of the District including dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, hazardous wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes.

Practical quantitation limit - the lowest concentration of a substance that generally can be determined by qualified laboratories within specified limits of precision and accuracy under routine laboratory operating conditions in the matrix of concern.

Primary contact recreation - those water contact sports or activities that result in frequent whole body immersion or involve significant risks of ingestion of the water. Such uses are not expected during times of high current velocity, floods,

electrical storms, hurricanes, tornadoes, winter temperatures, heavy ice conditions and other adverse natural conditions.

Responsible party - any person who has caused or is causing pollution or has created or is creating a condition from which pollution is likely to occur.

Secondary contact recreation - those water contact sports or activities that seldom result in whole body immersion or do not involve significant risks of ingestion of the water.

Semi-anadromous fish - fish that spend most of their lives in tidally influenced low to medium salinity waters but migrate into freshwater tributaries to spawn.

Short term degradation - the period during which the waterbody may be degraded based on the nature of the pollutant and the degree of its environmental or human health impact, as determined by the Director on a case-by-case basis.

Solid waste - all putrescible and non-putrescible solid and semisolid wastes, including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This term also includes all liquid, solid, and semisolid materials that are not the primary products of public, private, industrial or commercial mining, and agricultural operations.

Standards - those regulations, in the form of numerical, narrative, or enforcement standards, that specify a level of quality of the waters of the District necessary to sustain the designated uses.

Surface impoundment - a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and that is designed to hold an accumulation of liquids or sludge.

Surface waters - all rivers, lakes, ponds, wetlands, inland waters, streams, and all other water and water courses within the jurisdiction of the District of Columbia.

Tidally influenced waters - surface waters within the Potomac River, the Anacostia River and all embayments and tributaries to these rivers under the influence of tidal exchange.

Toxic substance - any substance or combination of substances that, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic

mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities, in the organism or its offspring.

Trend analysis - a statistical methodology used to detect net changes or trends in contaminant levels over time.

Water Effect Ratio or WER - the ratio of site water LC₅₀ value to the laboratory water LC₅₀ value.

Waters of the District or District waters - flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems.

Wetland - a marsh, swamp, bog, or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation.

Wildlife - all animal life whether indigenous or migratory regardless of life stage including, but not limited to, birds, anadromous and semi-anadromous fish, shellfish and mammals including sensitive species, which are found in or use the District waters.

1199.2 When used in this chapter, the following abbreviations shall have the meaning ascribed:

°C	-	degrees centigrade
CaCO ₃	-	Calcium Carbonate
CF	-	Conversion Factor
m	-	meter
mg/L	-	milligrams per liter
mg N/L	-	milligrams of Nitrogen per liter
mL	-	milliliter
MPN	-	Most Probable Number
NPDES	-	National Pollutant Discharge Elimination System
NTU	-	nephelometric turbidity units
µg/L	-	microgram per liter
WQS	-	water quality standards

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the DCHA gives notice of intent to take final rulemaking action to adopt these amendments in not less than twenty-one (21) days from the date of publication of this notice in the D.C. Register. The Board of Commissioners of DCHA finds good cause to publish these proposed regulations for less than thirty days as the rules are a product of extensive vetting through public hearings, presentation to DCHA resident leadership and discussions with advocates representing the individuals who would be affected by the rules.

Proposed Amendment: Chapter 62, Low Rent Housing: Rent and Lease, is amended by adding a new Section 6211 to read as follows:

6211 PET OWNERSHIP IN PUBLIC HOUSING

6211.1 Pets Generally Prohibited. Pets are not generally permitted at DCHA properties, except as provided in subsection 6211.2 and 6211.3 herein.

6211.2 Prior Ownership.

(a) Residents of Elderly-only and Mixed population properties who own a pet that resides in their unit prior to May 1, 2005, may continue to own a pet that is otherwise not prohibited permitted under Subsection 6211.4(a) below, provided the resident complies with the requirements of Subsections 6211.5(a) and (c) on or before July 1, 2005.

(b) Residents who own a service animal that resides at any property prior to May 1, 2005, must file a request for a reasonable accommodation, and otherwise comply with the requirements of Subsections 6211.5(a) and (c) on or before July 1, 2005.

6211.3 Service Animals. Residents of any DCHA-owned property who are disabled may own a service animal as a reasonable accommodation provided that an application for a reasonable accommodation has been submitted and approved in accordance with Chapter 74 of this title and the resident has complied with the requirements of Subsections 6211.5(a) and (c) hereof.

6211.4 Animal Limitations.

(a) Under no circumstances will animals whose natural protective mechanisms pose a risk of serious bites and lacerations, or are considered to be, or are found to be, dangerous, aggressive, vicious, intimidating or detrimental to the health and safety of other residents or employees, be

permitted as pets or service animals. Snakes or other types of undomesticated animals are not permitted as pets or service animals.

- (b) Dogs in excess of 25 pounds are only permitted if they are:
 - (i) Properly trained as a service animal for the person's specific disability, such as seeing-eye dogs; or
 - (ii) Otherwise are eligible under the prior ownership provisions of Section 6211.2.

6211.5 Registration Requirements.

Residents at any DCHA-owned property, who are permitted to have a pet or service animal under the provisions of 6211.2 or 6211.3 above, may keep an animal, subject to the restrictions in Subsection 6211.4, provided they also comply with the following requirements:

- (a) Register the animal with the property manager;
- (b) Update the registration for the animal annually;
- (c) Provide proof the animal has been inoculated in accordance with applicable local law;
- (d) Execute a lease addendum providing for the proper care and maintenance of the animal and the unit occupied by the animal in accordance with DCHA rules; and
- (e) Continuously provide the proper maintenance and care for the animal and assure that the animal does not otherwise impair the peaceful enjoyment of the property by other residents.

6211.6 After the effective date of these regulations, no pet or service animal shall be brought on any DCHA property prior to registration and compliance with the requirements of Subsections 6211.5(a) and (c) and, in the case of service animals, approval of a request for reasonable accommodation in accordance with Chapter 74 of this Title.

6211.7 A request to register a pet or service animal in public housing under the provisions of 6211.2 and 6211.3 above that is denied for any reason is subject to the grievance procedure provided in Chapter 63 of this Title.

Proposed Amendment: Chapter 74, Reasonable Accommodation Policies and Procedures, is amended by revising Section 7409 to read as follows:

7409 SERVICE ANIMALS

- 7409.1 Residents of DCHA with disabilities are permitted to have service animals, if such animals are necessary as a reasonable accommodation for their disabilities. DCHA residents or potential residents who need a service animal as a reasonable accommodation must request the accommodation in accordance with the reasonable accommodation policy.
- 7409.2 Residents must register their animal with their Property Manager before it is brought onto DCHA's property, and must update the registration annually at the Property Manager's Office. The registration must include a certificate signed by a licensed veterinarian or a local authority empowered to inoculate animals (or designated agent of such an authority) stating that the service animal has received all inoculations required by applicable local law.
- 7409.3 DCHA requires that a resident or prospective resident with a service animal provide written certification:
- (a) From a third party, such as a health care provider, that the resident or a member of his or her family is a person with a disability and that an animal of the type proposed is reasonably necessary to meet the needs of the disabled person; and
 - (b) Provide certification from a third party knowledgeable about the service animal, that it has the capacity and individualized training, where necessary as for a seeing Eye dog, to work for the benefit of the person with a disability.

Comments on these proposed regulations should be submitted, in writing, to Margaret McFarland, General Counsel, 1133 North Capitol Street, N.E., Washington, DC 20002, Suite 210, within twenty one (21) days of the date of publication of this notice in the DC Register. Additional copies of these proposed rules are available from the above address.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority ("DCHA") hereby gives notice of intent to take final rulemaking action to adopt these amendments to Title 14 of the District of Columbia Municipal Register by adding "Chapter 85: Housing Choice Voucher Program: Participant Moves" in not less than twenty one (21) days from the date of publication of this notice in the D.C. Register. The Board of Commissioners of DCHA finds good cause to publish these proposed regulations for less than thirty days as the rules have been the focus of many discussions with stakeholders, tenants and landlords participating in the program, as well as the Board of Commissioners of DCHA in connection with responding to program and funding changes affecting the housing choice voucher program this fiscal year. Moreover, most of the provisions herein confirm existing DCHA policies or are technical modifications to provide for more efficient and effective operation of the program.

Proposed Amendment: Title 14 is amended to add Chapter 85, Housing Choice Voucher Program: Participant Moves, to read as follows:

8500 PARTICIPANT HOUSEHOLD MOVES

8500.1 Prerequisites to a Move. A Participant Household may move to another unit with and continue to receive a housing assistance subsidy in the District of Columbia if:

- (a) The Household meets the following five conditions:
 - (1) The Household is not within the first term of their existing lease (unless Landlord and household mutually agree in writing to terminate the lease or HCVP terminates the HAP Contract for any reason);
 - (2) The Household is in good standing and is not currently in violation of any family obligations as a participant in the Housing Choice Voucher Program and applicable HCVP and HUD rules and regulations;
 - (3) The Household is current on any payments due to DCHA;
 - (4) The Household attends a full transfer briefing conducted by DCHA; and
 - (5) The effective date of the new lease begins on the first of the month; or

(b) The Household is not required to provide new lease-up or other documents to DCHA and the owner shall continue to receive Housing Assistance Payments as if the Participant had never requested the Transfer Voucher.

(c) The Household's prior Total Tenant Payment continues in effect.

8500.5 Future Moves. If a Household decides to move at a future date while the Transfer Voucher is still in effect, or upon obtaining another Transfer Voucher, the Household is required to:

(a) Give the owner notice as provided under the Household's lease or otherwise by mutual consent with the Owner permitting termination of the existing lease; or

(b) If the Transfer Voucher has expired, the Household is required to request a Transfer Voucher under the conditions identified in Subsection 8500.1 above.

Comments on these proposed regulations should be submitted, in writing, to Margaret McFarland, General Counsel, 1133 North Capitol Street, N.E., Washington, DC 20002, Suite 210, within (21) days of the date of publication of this notice in the DC Register. Additional copies of these proposed rules are available from the above address.

**DISTRICT OF COLUMBIA HOUSING AUTHORITY
NOTICE OF PROPOSED RULEMAKING**

The Board of Commissioners of the District of Columbia Housing Authority ("DCHA") herby gives notice of intent to take final rulemaking action to amend Title 14 by adopting an Amended and Restated "Chapter 92: Housing Choice Voucher/Home Ownership Assistance Program (HCV/HOAP)", in not less than twenty-one (21) days from the date of publication of this notice in the D.C. Register. The Board of Commissioners of DCHA finds good cause to publish these proposed regulations for less than thirty days as the rules are amendments to an existing program and are critically important in order to timely facilitate the closing of homeownership purchases by program beneficiaries who are awaiting the final real estate conveyance in order to occupy their new homes.

**CHAPTER 92 HOUSING CHOICE VOUCHER/HOME OWNERSHIP ASSISTANCE
PROGRAM (HCV/HOAP)**

9200 GENERAL PROGRAM DESCRIPTION

The Housing Choice Voucher/Home Ownership Assistance Program (HCV/HOAP) is designed to offer eligible families who are participating in the Housing Choice Voucher Program the opportunity of becoming a home owner. The HOAP provides for DCHA to make a Housing Choice Voucher Payment on behalf of a Participating Family to a Participating Mortgage Lender who has provided a mortgage loan to the Participating Family for the purchase of a home. The program requirements, conditions of HOAP assistance, as well as, other pertinent terms and program elements are all set forth in the Sections herein.

9201 PURPOSES

9201.1 The purposes of the HCV/HOAP are to:

- (a) Provide safe, adequate and affordable housing;
- (b) De-concentrate areas of geographic poverty;
- (c) Encourage upward mobility;
- (d) Foster economic self sufficiency; and
- (e) Increase home ownership, while minimizing mortgage default risk.

9202 DEFINITIONS

9202.1 "Cooperative" - A cooperative is defined as housing owned by a nonprofit corporation or association and where a member of the corporation or association has the right to reside in a particular apartment and to participate in the management of

- 9202.2 "Cooperative Member" - A Cooperative member is defined as a family in which one or more members own membership shares in a cooperative.
- 9202.3 "DCHA" means District of Columbia Housing Authority or any successor agency, thereto.
- 9202.4 "Disabled Family" - means a family whose head, spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.
- 9202.5 "Elderly Person" - One who is at least 62 years of age.
- 9202.6 "Eligible Family" - an Eligible Family is a household of one or more persons that meets the minimum eligibility requirements set forth in Section 9203.
- 9202.7 "Elderly Household or Family" - A family whose head or spouse or whose sole member is at least 62 years of age or a disabled person as defined in this Section. Family may include two or more elderly or disabled persons living together or one or more such persons living with another person who is determined to be essential to his or her care and well being.
- 9202.8 "Family Self-Sufficiency Program" - Family Self-Sufficiency program or FSS program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by Section 23 of the 1937 Act.
- 9202.9 "Full-time Basis" means at least 30 hours per week.
- 9202.10 "HCV/HOAP" means the Housing Choice Voucher/Home Ownership Assistance Program operated by the District of Columbia Housing Authority. Within this document "HCV/HOAP" and "HOAP" are used interchangeably.
- 9202.11 "HOAP Subsidy" or "HCV/HOAP Assistance" means the home ownership subsidy assistance for payment to a mortgage lender on behalf of a Participating Family as provided through the Housing Choice Voucher program in the amount as determined under Subsection 9212.2.
- 9202.12 "HOAP Applicant Family" - An eligible Family that has been issued a Certificate of Completion and is in the process of obtaining a Preliminary Certificate of Assistance; Mortgage Pre-approval; Home Search Authorization; Final Certificate of Assistance.
- 9202.13 "HOAP Participating Family" - A HOAP Applicant Family who has completed all the

steps necessary to the purchase of a home and closed on their mortgage loan.

- 9202.14 "Housing Choice Voucher Program" or HCVP or HCV program means the rental assistance program established by Section 8 of the 1937 Housing Act in its entirety, unless otherwise specified.
- 9202.15 "Income Eligible Family" - A Family that meets the eligibility requirements set forth in Subsection 9203.2(c).
- 9202.16 "Lease-Purchase Agreement" - A lease-purchase agreement is a lease agreement with an option to purchase a property entered into between a property owner and a tenant with the objective of the tenant having a right to exercise the right to purchase the leased property within a specified period time.
- 9202.17 "Membership Share" - Membership share is defined as ownership of a share of a cooperative that gives the shareowner the right to reside in a particular unit in the cooperative and the right to participate in management of the housing.
- 9202.18 "Participating Lender" - A lender who has agreed to participate in the HCV/HOAP and provide loans to borrowers under the terms and conditions of this program. Additionally, participating lenders agree to make loans to Participating HOAP Families which comply with the regulations herein, and are characterized by reasonable interest rates and repayment terms.
- 9202.19 "Payment Standard" - The maximum monthly assistance payment for a family as determined in accordance with Chapter 83 of this Title 14.
- 9202.20 "Total Tenant Payment" - The amount toward a mortgage payable by a tenant which shall be determined in accordance with Chapter 83 of this Title 14

9203 ELIGIBILITY REQUIREMENTS

- 9203.1 As a threshold determination for participation in the HCV/HOAP, a family either shall already be a participant under lease in the Housing Choice Voucher Program or be eligible for home ownership under any other DCHA program
- 9203.2 A family that meets the threshold determination shall then meet the following eligibility requirements:
- (a) First Time Homeowner. The family may not include any person who has held an ownership interest in a residence during the three (3) years prior to commencement of the HOAP Subsidy, except as follows:
- (1) Equitable interest in a property under the terms of a lease-purchase

agreement prior to exercise of the purchase option.

- (2) An individual who is now single, but had previously owned a home with his or her former spouse even within the three year period;
 - (3) A family in which a family member is a person with a disability, if homeownership assistance is needed as a reasonable accommodation; and
 - (4) A family that owns or is acquiring shares in a cooperative.
- (b) Employment. Except as provided in 9203.4 and 9203.5, the family shall provide proof of employment such that:
- (1) One or more of the adult family members who shall be a borrower or co-borrower at the commencement of receiving HOAP assistance, is currently employed on a Full-time Basis; and
 - (2) At least one borrower shall have been employed for at least two (2) continuous years preceding the beginning of HOAP Subsidy.
- (c) Minimum Income.
- (1) The family shall demonstrate that gross annual income of the borrower or co-borrowers is either:
 - (i) Equal to at least 2,000 full-time work hours at the Federal Minimum Wage (FMW); or
 - (ii) For Disabled Families, equal to the monthly federal Supplemental Security Income Program benefit for an individual living alone multiplied by 12.
 - (2) Except as allowed in Subsection 9302.2©(1)9ii above, income shall come from a source other than public governmental assistance.
- (d) Family Self Sufficiency. Applicants for the HCV/HOAP shall be enrolled in a self sufficiency program recognized by DCHA, unless the applicant an Elderly or Disabled Household..
- (e) Good Standing. The family shall be in Good Standing as follows:
- (1) The family shall have disclosed all prior debts to DCHA or any other public housing agency and have repaid all such debt at least a year prior to the family applying to participate in the HCV/HOAP program.

- (2) The family shall not have committed fraud in connection with the HCV program or any other federally funded program.
 - (3) The family shall not have defaulted, or be in default, on any mortgage securing debt to purchase a home under any prior HCV/HOAP participation.
 - (f) Current Lease. The family shall be current in all monetary lease obligations and shall not otherwise be in violation of their lease and shall give proper notice as provided under their lease or, in the absence of a specified notice period in the lease, in accordance with District of Columbia law, prior to commencement of HCV/HOAP assistance payments.
 - (g) Recertification. If the family is a current participant in the HCV program or other DCHA program they shall qualify through an updated annual income recertification and determination that the family is otherwise in compliance with all program requirements.
- 9203.3 If a family purchases or takes title to a home before receiving approval to participate in the HCV/HOAP, the family shall be determined ineligible.
- 9203.4 The employment requirement does not apply to an Elderly Family or Disabled Family.
- 9203.5 If a family that does not otherwise qualify as a Disabled Family pursuant to Subsection 9202.4, includes a person with a disability, the HCV/HOAP shall grant an exemption from the employment requirement, if it is determined that the exemption is needed as a reasonable accommodation.
- 9203.6 Elderly and Disabled Families are exempt from the maximum assistance terms applicable for receiving subsidy from the HCV/HOAP, as follows:
- (a) In the case of an Elderly Family, this exemption is only applicable if the family qualifies as elderly at the commencement of assistance.
 - (b) In the case of a Disabled Family, this exemption applies if at any time during receipt of housing assistance the family qualifies as a Disabled Family.
 - (c) If during the course of the receipt of HOAP Subsidy the family ceases to qualify as a Disabled or Elderly Family, the maximum term of the Subsidy becomes applicable from the date the housing assistance commenced, provided that the Participating Family that was formerly qualified as a Disabled or Elderly Family shall receive the greater of the following;
 - (1) At least six (6) months of assistance after the maximum term becomes applicable; or

- (2) The remaining term of assistance.

9204 PARTICIPANT SELECTION PROCESS

9204.1 The HCV/HOAP program may select participants for the homeownership program in in one of the following two ways::

- (a) Designation of a pool of interested current HCV participants, which may be determined by phone, in-person, or paper application, who shall be selected by a lottery or assignment of a random number for a predetermined number of program participants as determined by the Board of Commissioners from time to time; or
- (b) Designation of all HOAP applicants that meet the threshold and eligibility criteria and selection from such group on the following basis:
 - (1) HCVP Families participating in the Family Self-Sufficiency Program with homeownership as a stated goal;
 - (2) Public housing residents or HCVP Families participating in the Community Self Sufficiency Program (or a similar program with homeownership being a stated goal of their program participation), in connection with public housing development or redevelopment efforts of DCHA, its subsidiaries, or its joint venture partners.
 - (3) Participating HCVP Families who otherwise do not qualify under (1) or (2) above and are income eligible and are pre-approved for credit by a lender,
 - (4) Families who wish to exercise their "right of first refusal" to purchase a unit that they currently occupy with a housing subsidy under a housing assistance payment contract .

9204.2 Those individuals or families selected for participation, who meet the eligibility requirements stated under Section 9203, above, shall proceed to homeownership by those steps identified beginning in Section 9205 through Section 9212.

9205 PROGRAM PARTICIPATION REQUIREMENTS

9205.1 HCV/HOAP Briefing. As a first step in the participation process, each selected family is required to attend a briefing about the HCV/HOAP.

9205.2 Participation Eligibility Assessment. Before proceeding to the next steps:

- (a) DCHA shall verify that the Family meets the minimum participation requirements of Section 9203; and
- (b) DCHA or its designee shall make a preliminary assessment of the family's credit history and assess what intermediate steps, if any, shall be taken by the family to repair their credit in order to enter the home buying process.

9205.3 Home Ownership Counseling. The family shall satisfactorily complete a minimum of eight (8) hours of home ownership and housing counseling training, before the family can proceed to the home buying process. This training for homebuyers shall be provided by the HCV/HOAP or its designee and cover the following topics:

- (a) Credit Counseling, including credit repair;
- (b) The Home Purchase Process, including the selecting of a real estate agent and home inspection professional;
- (c) Homeownership Financing, including selection among the program's Participating Lenders;
- (d) Mortgage delinquency/default prevention;
- (e) Consumer (Homebuyer) Protection;
- (f) Home Maintenance and Repair; and
- (g) Choosing a good location.

9205.4 Certificate of Completion.

- (a) Before proceeding to the next step of the process, the family's credit shall be sufficiently acceptable to pass credit report review by the Counseling Agency.
- (b) If the family has issues that would impede the lender giving loan approval, the counseling agency shall provide credit repair counseling or refer the family to another agency who shall provide such counseling and the steps the family shall take before receiving a Certificate of Completion and permission to proceed with the home purchasing process.
- (c) A Certificate of Completion shall be issued upon:
 - (1) Successful completion of the home ownership and housing counseling sessions;

- (2) Verification by the agency that the Applicant Family has an acceptable credit report; and
- (3) Verification that the Applicant Family has sufficient assets to make a least a 1% down payment investment from personal resources.

9205.5 Preliminary Certificate of Assistance.

- (a) HCV/HOAP shall issue a preliminary certificate of assistance which shall be based upon the following:
 - (1) Standard terms for mortgage financing, insurance, taxes and maintenance; and
 - (2) Income of the Family based on the last annual recertification.
- (b) The Preliminary Certificate of Assistance shall set a preliminary HOAP Assistance amount and Total Tenant Payment (the Participant's required contribution), based on the Payment Standard for the family size and house size designated by the Applicant Family at the time the Preliminary Certificate is issued.

9205.6 Mortgage Pre-approval.

- (a) Upon receipt of their Preliminary Certificate of Assistance the family shall select a Participating Lender and present their Preliminary Certificate of Assistance to apply for their mortgage pre-approval.
- (b) The family shall be allowed sixty (60) days after completion of the home ownership counseling to obtain mortgage pre-approval. An extension may be granted depending on the circumstances and/or where the family is in the pre-approval process.
- (c) The mortgage pre-approval letter shall reflect the HCV/HOAP Assistance payment and the family's contribution as detailed on the Certificate of Assistance.
- (d) Families shall submit their mortgage pre-approval letter to the HCV/HOAP or its designee within ten (10) days of receipt.

9205.7 Home Search Authorization

- (a) Subsequent to receipt of a mortgage pre-approval letter from a Participating Lender, HCV/HOAP shall issue the Applicant Family written authorization to begin their search for a home that is eligible under the provisions of Section

9207; hereof.

- (b) The Applicant family shall be responsible for selecting a lender participating in the HCV/HOAP, as well as an independent professional housing inspector and a real estate agent.
- (c) The HCV/HOAP and the Counseling Agency may maintain information about properties for sale, participating lenders, real estate agents, and down-payment programs, which the family may choose to use at their discretion.

9205.8

Home Search Time Limits and Extensions.

- (a) From the date of issuance of a Home Search Authorization, the family shall be allowed a total time period of one hundred and eighty (180) days to:
 - (1) Search for and find a home;
 - (2) Execute a contract of sale, including the HCV/HOAP contract addendum as required under Section 9209;
 - (3) Submit the sales contract to HCV/HOAP for review;
 - (4) Obtain a firm loan commitment;
 - (5) Obtain a HQS inspection from HCV;
 - (6) Submit a Professional Inspection Report to HOAP, as provided under Section 9209;
 - (7) Obtain HOAP Notice of Inspection Approval, as provided under Section 9208;
 - (8) Obtain a Final Certificate of Assistance from HCV/HOAP;
 - (9) Sign all required HCV/HOAP forms and attachments, including:
 - (i) Statement of Homeownership Obligations, required under Section 9215 hereof;
 - (ii) A Recapture Agreement and Subordinate Mortgage, as required under Section 9214 hereof;
 - (10) Close on the purchase of the property and the mortgage loan;
 - (11) Notify HCV/HOAP that the Loan Closed and the first mortgage payment date for HOAP subsidy payments.

- (b) Extenuating circumstances which prohibited closing on the purchase of a home within the designated time period shall be reviewed upon request, and an extension granted, at the discretion of the DCHA.
- (c) An Applicant family shall be withdrawn from the HCV/HOAP and required to wait one year before they shall be allowed to participate again under any of the following circumstances:
 - (1) The family has executed a contract of sale and has failed to complete the purchase for reasons within their control;
 - (2) The family at any time during the one hundred eighty (180) day period decides to withdraw from participation in the HCV/HOAP;
 - (3) The family is unable to locate a home to purchase and close on the purchase within the time provided, and does not want or qualify for an extension of time to continue the process.

9206. Purchase Agreement Requirements

9206.1 A family shall execute a purchase agreement with the owner of the property to be purchased, except, in the case of a cooperative member with existing cooperatives shares.

9206.2 The sales contract, or an addendum, thereto, shall include provisions making the sale contingent, and the family having no obligation to complete the purchase, unless there is satisfaction of the following minimum conditions:

- (a) An HQS inspection of the property with such inspection being satisfactory to HCV/HOAP;
- (b) An inspection of the home by a licensed professional home inspector, obtained at the expense of the purchaser, with such inspection being satisfactory to HCV/HOAP;
- (c) The purchaser is not obligated to pay for any necessary repairs without HCV/HOAP approval
- (d) Any repairs made by the seller shall be completed and a satisfactory HQS re-inspection completed before the purchase process continues.
- (e) Purchase terms, inspection reports and mortgage financing terms acceptable to HCV/HOAP or its designee.
- (f) A seller certification that the seller is not debarred, suspended or subject to

limited denial or participation, under 24 CFR part 24.

- (g) All good faith money provided shall be returned in full if the purchase is not approved by HCV/HOAP.

9207 HOMES AND PERMITTED OWNERSHIP ARRANGEMENTS

9207.1 Permitted types of homes for purchase with a HOAP subsidy under the HCV/HOAP, provided the home purchased is located in the District of Columbia.

- (a) Single family home,
- (b) Townhome;
- (c) Condominium;
- (d) Cooperative.

9207.2 Types of housing not approved for HOAP subsidy under the HCV/HOAP:

- (a) Multi-unit buildings or homes with one or more rental units;
- (b) Congregate Housing;
- (c) Group Homes;
- (d) Shared Housing;
- (e) Cooperative Housing that exclude families with children;
- (f) Manufactured Homes;
- (g) Single Room Occupancy Units' and
- (h) A home located outside of the District of Columbia..

9207.3 The construction status at the time of issuance of the Certificate of Assistance, may be any of the following:

- (a) Under construction (provided construction is complete upon closing the loan and commencement of the HOAP assistance);
- (b) New construction ready for occupancy; or
- (c) Existing housing, with no age limitations.

9208 REVIEW OF PURCHASE CONTRACT AND ISSUANCE OF FINAL CERTIFICATE OF ASSISTANCE

9208.1 Once the Applicant Family has found a home and executed a purchase agreement, the family shall provide the HCV/HOAP or designee with the following required documents for review and/or approval:

- (a) Verification of funds for the family's 3% initial down-payment investment and verification that 1% of the down payment is derived from the family's personal resources;
- (b) The executed purchase agreement or contract of sale;
- (c) The professional home inspection report.

9208.2 Based on the purchase amount identified in the purchase agreement and the loan terms of the mortgage pre-approval submitted by the Applicant Family, the HCV/HOAP shall determine the amount of the HOAP Subsidy and the Total Tenant Payment, taking into account:

- (a) The family composition;
- (b) The bedroom size of the home;
- (c) The applicable Payment Standard;
- (d) The Family Income as determined on the last annual recertification;
- (e) The estimated homeownership expenses, taking into account the projected mortgage payment, insurance and taxes, and homeownership expenses, calculated in accordance with Subsection 9212.2, hereof.

9208.3 HCV/HOAP shall review the seller against the debarment and suspension lists provided by HUD and disapprove the contract if the seller appears on such lists..

9208.4 HCV/HOAP shall issue a Notice of Approval or Disapproval of Inspection under the provisions in Section 9209, below.

9208.5 Unless the purchase contract is disapproved or the Inspection is for Disapproval, the HCV/HOAP shall issue a Final Certificate of Assistance, which the Applicant Family shall submit to their Participating Lender in applying for a mortgage loan.

9209 HOME INSPECTION

9209.1 Before issuance of a Final Certificate of Assistance, the Applicant Family shall

schedule two kinds of physical inspections required in the HCV/HOAP.

- (a) A Housing Quality Standard (HQS) inspection conducted by the HCV/HOAP:
 - (1) The HQS inspection does not include an assessment of the adequacy and life span of the major building components, building systems, appliances or other structural components.
 - (2) However, the HQS inspection shall indicate the current physical condition of the home and any repairs necessary to ensure that the home is safe and otherwise habitable.
- (b) An independent professional home inspection by an inspector who is certified, licensed, and bonded and is neither an employee, nor a contractor of DCHA.
 - (1) The inspection shall be a comprehensive evaluation of the major building components and systems of the home, determining the existing condition and the need, if any, for repairs.
 - (2) At least the following shall be examined for deficiencies:
 - (i) the structure;
 - (ii) basement/crawl space(s);
 - (iii) electrical and heating/cooling systems;
 - (iv) energy/insulation;
 - (v) ventilation;
 - (vi) kitchen appliances;
 - (vii) plumbing;
 - (viii) walls/ceiling;
 - (ix) floors;
 - (x) roof/attic;
 - (xi) exterior finish;
 - (xii) fireplace/chimney;
 - (xiii) windows/doors; and

(xiv) gutters/drainage.

9209.2 Request and payment for professional home inspection.

- (a) The independent professional home inspection shall be requested and paid for by the family.
- (b) A copy of the inspection report shall be provided to HCV/HOAP within five (5) working days of receipt of the report.
- (c) The source(s) of funds for family payment of the professional home inspection may be a source other than family personal income.

9209.3 HCV/HOAP Review of Inspection Reports.

- (a) The HCV/HOAP shall review the professional inspection report and the HQS report to determine whether repairs are necessary prior to purchase and to generally assess whether the purchase transaction makes sense in light of the overall condition of the home and the likely cost of repairs.
- (b) Notice of Inspection Approval.
 - (1) No deficiencies. If the HQS inspection report and the professional inspection report reveal that the home meets satisfactory standards and there are no deficiencies, the program shall provide a notice of inspection approval.
 - (2) Contingent Approval for Minor Repairs. If the inspection reports indicate the need for repairs that can be corrected in a time period that compliments the purchaser's time table, the program shall provide the family with a notice of inspection approval, subject to the completion of repairs at the seller's expense, and a satisfactory follow up inspection by HQS or the professional inspector.
- (c) Options if Major Repairs Required. If the HQS inspection report and/or the report from the professional inspector reveals major defects in and/or repairs to the home, the HCV/HOAP shall either issue a Contingent Disapproval or a Notice of Disapproval.
- (d) Contingent Disapproval.
 - (1) If HCV/HOAP considers the major repairs to be feasible, the HCV/HOAP shall outline those defects/repairs noted in the inspection report that shall be corrected by the Seller, at Seller's expense, prior to purchase and stipulate the specific time frame by which they shall be

corrected.

- (2) Re-inspection shall be required upon completion of the repairs. The HCV/HOAP shall complete a follow-up HQS inspection. The Applicant Family shall be required to obtain a follow up inspection from the professional inspector to review the corrections, with any additional fee to be paid by the Family.
 - (3) The applicant family shall provide HCV/HOAP with a copy of the follow-up home inspection report from the professional inspector.
 - (4) The home inspection report shall be acceptable to HCV/HOAP before approval to continue shall be granted.
- (e) Notice of Disapproval.
- (1) If HCV/HOAP determines that the home is not suitable for HOAP Subsidy because of the major physical problems and/or the cost of the subsequent repairs HCV/HOAP shall issue a written Notice of Disapproval. The notice shall state the reason(s) for the disapproval.
 - (2) The notice shall direct the Seller to return all earnest money and inform the family that they shall withdraw their offer and search for another home to purchase.
 - (3) The time period between the inspections and the disapproval shall not be counted against the 180 days allowed for the search and closure process under Subsection 9205.8, above.

9210 ELIGIBLE TYPES AND TERMS OF FINANCING

9210.1 Family Responsibility. The family is responsible for securing their own mortgage loan financing from a Participating Lender.

9210.2 Permitted Types of Loans: The following types of loans are acceptable:

- (a) Primary fixed rate mortgage loans that are:
 - (1) Insured by the FHA;
 - (2) Guaranteed by VA or other governmental entity;
 - (3) Insured with private mortgage insurance, if:
 - (i) The terms comply with secondary mortgage market underwriting of Fannie Mae, Freddie Mac, or the Federal

Home Loan Bank; or

- (4) Obtained through any other local or federal governmental lending program.

- (b) Subordinated mortgage loans, using

- (1) Local Community Development Block Grant funds; or
- (2) Other subsidized subordinate funding available in conjunction with the HCV/HOAP.

9210.3 Prohibited Loans. The following types of financing are considered high risk and are not approved for use:

- (a) Balloon payments;
- (b) Adjustable rate mortgages;
- (c) Loans to persons in addition to those listed in the family's HCV/HOAP application;
- (d) Owner financing except as may be approved on a case by case basis; and
- (e) Any other type of loan that may come to the attention of HCV/HOAP that demonstrates a high-risk factor, as may be determined on a case by case basis.

9210.4 Minimum Down Payment. The minimum down payment requirements are:

- (a) The family shall contribute a minimum of three (3%) percent of the purchase price of the home as a down payment.
- (b) The source of the down payment (3%) funds can include, but is not limited to, the following:
 - (1) Gifts from family members or friends;
 - (2) Loans from family members or friends;
 - (3) Loans from any governmental program secured by a subordinate lien.

9210.5 Delinquency Notification by Lenders. Participating lenders shall agree to notify HCV/HOAP of any mortgage payment delinquency, in order to initiate prompt intervention and to avoid serious mortgage delinquency/default.

9211 LOAN APPROVAL

- 9211.1 The HCV/HOAP or its designee reserves the right to:
- (a) Determine if the financing terms secured for the mortgage are acceptable under the program; and
 - (b) Reject the terms of a loan upon determination of any of the following:
 - (1) The family income, combined with home ownership assistance is not sufficient to cover all housing costs, taking into account other family expenses, such as childcare, non-reimbursed medical expenses, transportation costs, education and training expenses;
 - (2) The loan or purchase contract has terms and conditions that are burdensome and/or inconsistent with the HCV/HOAP rules, requirements and objectives;
 - (3) The loan is being made to include persons other than those listed in the family HCV/HOAP application;
 - (4) The loan financing chosen is a non-approved type, under Subsection 9210.3, above;
 - (5) The loan financing is another type that is determined to have a high risk factor at a later time.
 - (6) An independent third party appraisal has not confirmed a market value for the property which is sufficient to support the actual sales price.
 - (7) Closing costs and sales commissions exceed reasonable and customary fees.
- 9211.2 Notice of Loan Disapproval. In the event HCV/HOAP or its designee rejects a loan:
- (a) The family shall be issued a Notice of Loan Disapproval. The notice shall state the reason for the disapproval and inform the family that they shall seek another type of financing; and
 - (b) The time between submission of the loan documents and the disapproval shall not be counted against the time the family has to find a home under the HCV/HOAP.
- 9212 **HOME OWNERSHIP SUBSIDY TERMS AND CONDITIONS**
- 9212.1 Maximum Term of Subsidy

- (a) If the initial mortgage loan obtained to finance the purchase of the home has a term of twenty (20) years or more, The HCV/HOAP Subsidy may be paid for a maximum period of fifteen (15) years, provided the Family continues to qualify for Subsidy assistance.
- (b) If the initial mortgage loan has a term of less than twenty (20) years, the maximum term of home ownership assistance is ten (10) years.
- (c) The maximum term for the HCV/HOAP does not apply to an Elderly Family if the family qualifies as an Elderly Family at the commencement of the HCV/HOAP.
- (d) In the case of a Disabled Family, the Family is exempt from the maximum term if at any time during receipt of the assistance payments, the head of the household or any family member becomes disabled.
- (e) If during the course of the HCV/HOAP the family ceases to qualify as a Disabled or Elderly family, the following conditions apply:
 - (1) The maximum term becomes applicable from the date the initial HOAP assistance payments commenced; and
 - (2) The Participating Family shall be provided at least six (6) months of program assistance after the maximum term becomes applicable (provided the family is other wise eligible to continue participation in the HCV/HOAP).
- (f) The maximum term applies to any member of the family who:
 - (1) Is a co-borrower for mortgage financing of the home, during any time that HCV/HOAP payments are made; or
 - (2) Is the spouse of any co-borrower in the household, during any time that HCV/HOAP payments are made.

9212.2 Amount of HOAP Subsidy Assistance.

- (a) DCHA does not establish a separate Payment Standard for assistance under the HCV/HOAP.
- (b) The HOAP Subsidy Assistance payment shall equal the lower of:
 - (1) The Payment Standard minus the Total Tenant Payment; or
 - (2) The monthly home ownership expenses as determined under Section 9208.2 above, minus the Total Tenant Payment.

- (c) The Payment Standard to be used in calculating the Total Tenant Payment may be established at one of the following points at the discretion of DCHA and may only be adjusted thereafter for factors that would increase the Payment Standard from the selected point through the end of the term of the Subsidy.

- (1) Issuance of the Final Certificate of Assistance;
- (2) Closing of the mortgage loan and commencement of HCV/HOAP Assistance;
- (3) The most recent regular reexamination of the family income;

9212.3

Determination of Homeownership Expenses. The amount of HOAP assistance shall be determined by HCV/HOAP after taking into consideration the following costs to the family.

- (a) For a homeownership loan, the following costs shall be considered:
- (1) Principal and interest on the initial mortgage debt or any refinanced debt;
 - (2) Any mortgage insurance premium;
 - (3) Real estate taxes on the home;
 - (4) Home owners insurance;
 - (5) An allowance for maintenance expenses, including major repairs and replacement;
 - (6) Utility allowance schedule, and
 - (7) If the home is a condominium unit, the operating charges and/or maintenance fees assessed by the condominium association.
- (b) For purchase of shares in a Cooperative the following costs shall be included:
- (1) The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
 - (2) Principal and interest on the initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt or other mortgage debts;

- (3) Homeowners personal insurance;
- (4) Allowance for maintenance expenses, including major repairs and replacement;
- (5) Utility allowance schedule; and
- (6) Any cooperative association fees.

9212.4 Distribution of Monthly HCV/HOAP Payments.

- discontinued
level
- (a) Direct Payment to Lender. The monthly HCV/HOAP payment shall be made directly to the participating lender on behalf of the family.
 - (b) Discontinuance of Payments. HOAP assistance payment shall be following a determination that a family's income has increased to a where the family is no longer eligible to receive HCV/HOAP payments.
 - (c) Eligibility Termination. At the end of a continuous period of 180 days following a valid discontinuance of HCV/HOAP assistance payments, eligibility for HCV/HOAP shall automatically terminate.
 - (d) Discontinuance of Subsidy Payments - Family Moved.
 - (1) The HCV/HOAP assistance shall be paid only while the family is residing in the home. If the family moves out of the home, payment shall only be made through the end of the month the family moved out.
 - (2) The family is required to refund to the HCV/HOAP all or any portion of a payment received that is in excess of the balance required for the month the family moved out.
 - (e) Continuance of Subsidy upon Death of Title Holder. Provided the home continues to be occupied by the remaining family members, upon the death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, HCV/HOAP may, subject to other provisions of this Chapter, continue HOAP Subsidy payments pending settlement of the decedent's estate, notwithstanding transfer of the title by operation of the law to the decedent's estate, executor or legal representative.

9213 MAINTENANCE RESERVE

- 9213.1 The purchaser shall establish and maintain a maintenance reserve at all times.

9213.2 This fund is for home maintenance and repairs, and should be established and increased at regular intervals to ensure the availability of funds when needed.

9213.3 The HCV/HOAP or the counseling designee shall make recommendations on an amount that would build a sufficient reserve over a two to three year period.

9213.4 The reserve amount shall be kept in a bank or financial institution that provides periodic statements.

9213.5 Purchasers who fail to establish a maintenance reserve account, which shall be verified periodically, by the HCV/HOAP or the counseling designee, shall be required to attend individual counseling sessions and instructed to establish one.

9214 RECAPTURE OF ASSISTANCE

9214.1 Recapture Provision.

- (a) The HCV/HOAP shall recapture a percentage of the homeownership proceeds provided to the family upon the sale of the home, unless the proceeds are invested in the purchase of another home under the HCV/HOAP program.
- (b) The HCV/HOAP shall recapture a percentage of any proceeds realized upon refinancing that are retained by the family (example during a "cash-out" of the refinanced debt):

9214.2 Recapture Amount.

- (a) In the case of the sale of the home, the recapture amount shall be, subject to paragraph (c) below, in the amount equaling the lesser of the following:
 - (1) The amount the HCV/HOAP provided to the family, adjusted to reflect the automatic reduction provided in paragraph (c) below; and
 - (2) The difference between the sales price and the purchase price of the home minus:
 - (i) The cost of any documented capital expenditures; and
 - (ii) The cost incurred by the family in the sale of the home, such as brokerage fees or repair and fix-up costs; and
 - (iii) The amount of the difference between the sales price and purchase price that is being used upon sale, toward the purchase of a new home under HCV/HOAP; and
 - (iv) Any amounts previously recaptured.

- (b) In the case of a refinancing of the home, the recapture shall be, subject to paragraph (c) below, in an amount equaling the lesser of the following:
 - (1) The amount the HCV/HOAP provided to the family, adjusted to reflect the automatic reduction provided in paragraph (c) below; or
 - (2) The difference between the current mortgage debt and the new mortgage debt; minus:
 - (i) The cost of any documented capital expenditures; and
 - (ii) The cost incurred by the family in the refinancing of the home, such as reasonable and customary closing costs; and
 - (iii) Any amounts previously recaptured.
- (c) Automatic Reductions. The amount of the recapture shall automatically be reduced in increments of ten percent (10%) per year, over a ten (10) year period.

9214.3 Recapture Agreement and Mortgage Lien.

- (a) At the time of purchase, the family shall execute a Recapture Agreement and Mortgage document which obligates the family to repay a portion of the Subsidy under certain circumstances, and secures the HCV/HOAP right to recapture the HOAP Subsidy.
- (b) Subordinate Lien. The lien securing the recapture may be subordinated to the mortgage lien of the primary loan and other subordinate liens securing repayment of down-payment assistance.

9215. HOME OWNER OBLIGATIONS AND CONTINUED ASSISTANCE REQUIREMENTS

9215.1 HQS inspections shall be conducted annually as long as the Participant remains in the program and continues to receive assistance. The Participating Family is required to make any repairs necessary to meet the HQS.

9215.2 The Participating Family shall execute a Statement of Home Ownership Obligation whereby they contractually agree to comply on a continuing basis with the obligations, rules and requirements of the HCV/HOAP which cover the following areas:

- (a) Ongoing counseling.

- (b) Compliance with mortgage terms and conditions;
- (c) Prohibition against conveyance or transfer of home.
- (d) Supplying Required Information.
- (e) Notice of move-out.
- (f) Notice of mortgage default.
- (g) Prohibition of an ownership interest on second residence.
- (h) Notice of additional grounds for termination of assistance.

9215.3 Post Closing Housing Counseling.

- (a) The family shall commit to and follow through with participation in Post Settlement home ownership and housing counseling program sessions for three (3) years following settlement.
- (b) This requirement continues even in the event the family moves with continued assistance under HCV/HOAP.

9215.4 Compliance with Loan Terms. The family shall comply with the terms of the mortgage securing debt incurred to purchase the home and any refinancing of such debt.

9215.5 Pre-approval for any change in financing. The family shall obtain written approval from HCV/HOAP or its designee before securing any refinancing of the primary loan, subordinate equity loan or line of credit.

9215.6 No other Residential Ownership. During the time the family receives home ownership assistance, no family member may have any ownership interest in any other residential property.

9215.7 Sale or other Conveyance.

- (a) Prior Approval Required. So long as the family is receiving HOAP Subsidy payment from the HCV/HOAP they may not sell, convey or transfer any interest in the home to any entity or person without prior approval of HCV/HOAP, except in conformance with the provisions of (b) and (c) of this Subsection.
- (b) Conveyance to another family member. If the family chooses to convey the home, or their interest in the home to another family member, even if by operation of law upon divorce, they shall:

- (1) Inform HCV/HOAP of their intent prior to the conveyance or sale,
 - (2) Receive written consent from the HCV/HOAP before commencing with any such sale or transfer of interest,
 - (3) The family member shall have a voucher and continued eligibility for participation in the HCV/HOAP, if HOAP Subsidy is to continue.
 - (4) Provide the HCV/HOAP with copies of applicable documentation related to any sale, refinancing or transfer.
 - (5) Provide information and documentation on request of any mortgage or other debt incurred to purchase the home and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default).
 - (6) Provide supportive information on how the existing debt, mortgage or financial obligation shall be paid (in installments or in total).
- (c) Upon the death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home,
- (1) The family is required to inform the HCV/HOAP of the decedent's death within thirty (30) days of its occurrence.
 - (2) HCV/HOAP may continue HOAP Subsidy payments, pending settlement of the decedent's estate, notwithstanding transfer of the title by operation of the law to the decedent's executor or legal representative,
 - (3) Provided the home is solely occupied by the remaining family members.

9215.8

Required Notices to HCV/HOAP. Participating Families are required to inform HCV/HOAP of certain types of information on a regular or interim basis as follows:

- (a) Change in Expenses: Inform HCV/HOAP within 72 hours, of any change in the family ownership expenses or ability to pay household expenses that shall affect the family's ability to financially handle the change in expense and the monthly mortgage obligations.
- (b) Annual Recertification. The family shall participate fully in the annual recertification process by providing all required documentation, including verification that the mortgage, insurance, utility payments and other home ownership expenses are current.

- (c) Notice of move - with or without resale of home.
 - (1) The family shall notify the HCV/HOAP of their intent to move out of the home by supplying a written ninety (90)-day notice.
 - (2) The family shall notify the HCV/HOAP in advance if any family member who owns, in whole or in part, any ownership interest in the home moves out.
- (d) Notice of Mortgage Default. The family shall notify the HCV/HOAP if the family defaults on the mortgage securing any debt incurred to purchase the home within seventy-two (72) hours of receiving the letter of delinquency.
- (e) Change in Income or Family Composition. The family shall inform the HCV/HOAP and their housing program specialist of any change in the source and/or amount of family income and any change in the family composition within thirty (30) days of the change. A change in family composition shall not be cause of a reduction in the Payment Standard, but may be used to increase the Payment Standard.

9215.9 Relocation

- (a) Limitation on relocation. The family is prohibited from purchasing a new home more than once in a twelve (12) month period
- (b) Counseling Requirement after relocation. The family shall be required to participate in pre and/or post counseling sessions prior to moving to another home purchased under this program, if more than three years have passed since the family initially entered the HCV/HOAP and/or if significant changes to the regulations have occurred that might affect the family's continued eligibility.

9215.10 No rental. The family shall not rent any portion of the property.

9215.11 No Criminal Activity.

- (a) No family member may commit fraud, bribery or any other corrupt or criminal act in connection with the HCV/HOAP.
- (b) No family member may participate in, be charged with or be convicted of illegal drug or violent criminal activity while connected with the HCV/HOAP.

9215.12 Additional Counseling. HCV/HOAP reserves the right to require additional counseling for a family during their participation in the program.

9216 COOPERATIVE MEMBERS

- 9216.1 The HCV/HOAP subsidy may be provided to a family who is a member of a Cooperative and who owns or is acquiring membership shares in the Cooperative.
- 9216.2 HCV/HOAP shall provide an HQS inspection prior to commencement of HOAP Subsidy assistance. If the unit fails inspection, the HCV/HOAP shall employ its standard inspection follow up procedures. A cooperative member is exempt from the requirement to obtain professional home inspection.
- 9216.3 The HCV/HOAP shall make Subsidy payments directly to the cooperative on behalf of the cooperative member.
- 9216.4 The cooperative family or the cooperative member(s) is not required to maintain continued affordability after transfer of the member interest.
- 9216.5 All other requirements, policies and procedures of the HCV/HOAP shall apply to cooperative members. Members are required to meet basic minimum eligibility requirements and adhere to all other HCV/HOAP requirements.
- 9216.6 In the HCV/HOAP Subsidy assistance is paid on behalf of a cooperative member, but there is no requirement that the cooperative enter into any agreement or any direct relationship with the HCV/HOAP. The cooperative shall not be required to modify any ordinary requirement for cooperative membership or occupancy nor any requirement concerning assessment or collection of the cooperative carrying charge, maintenance fees for the unit or sanctions for the violation of cooperative requirements.

9217 LEASE-PURCHASE AGREEMENTS

- 9217.1 The HCV/HOAP may be provided to a family that rents a home with an option to buy the home under a lease-purchase agreement. In most cases, the monthly rent includes an amount referred to as a homeownership premium, which is an increment of value attributed the lease-purchase right or agreement such as an extra monthly payment to accumulate a down-payment or reduce the purchase price.
- 9217.2 If a family who holds a housing choice voucher, or is currently receiving rental assistance under the housing choice voucher assistance program would like to enter into a lease-purchase agreement with the property owner, the family may do so. However, the family shall not be subject to the HCV/HOAP regulatory requirements until the family is ready to exercise the home purchase option. At that time, the HCV/HOAP shall determine if the family is eligible for participation.
- 9217.3 Lease-purchase agreements are considered rental agreements and all the normal tenant-based HCV rules are applicable. Therefore, the HCV/HOAP shall not make a housing assistance payment for a lease-purchase unit that may exceed the amount that

would be paid on behalf of the family, if the rental unit were not subject to a lease-purchase agreement.

- 9217.4 The family shall absorb any homeownership premium or extra monthly payment towards a down payment related to the lease-purchase agreement. Families are permitted to pay any extra amount out of pocket to the owner for purchase-related expenses. Therefore, when HCV/HOAP determines whether or not the rent on a lease-purchase agreement is reasonable, any homeowner premium is excluded.
- 9217.5 The family shall meet all of the initial HCV/HOAP eligibility requirement before being approved to enter the HCV/HOAP program. Therefore, if the family purchases or takes title to a home before being approved by the HCV/HOAP program, the family shall be determined ineligible for HOAP Subsidy.
- 9217.6 When a family has leased a unit under a lease-purchase agreement that is approved for participation in the HCV/HOAP, at the time the Applicant Family chooses to exercise the purchase option, the family shall complete the following:
- (a) Meet all initial and continued annual eligibility requirements for participation in the HCV/HOAP;
 - (b) Complete the homeownership and housing counseling sessions;
 - (c) Secure mortgage financing and obtain approval of the finance terms by HCV/HOAP or its designee; and
 - (d) Arrange for an independent professional home inspection and provide the HCV/HOAP with a copy of the inspection report;
 - (e) Ensure that all required purchase process steps are satisfied within the allotted time;
- 9217.7 Upon approval to enter into the HCV/HOAP, the lease-purchase family shall be processed pursuant to the established HCV/HOAP procedures outlined in this Chapter.

9218 MOVING WITH CONTINUED HCV/HOAP ASSISTANCE

9218.1 Minimum Requirements.

- (a) If a family chooses to move to another home and wishes to have continued assistance from the HCV/HOAP, they shall again meet the statutory employment and minimum income requirements.
- (b) If a family cannot meet the statutory employment and minimum income requirements, the family shall be denied permission to move with continued

HCV/HOAP assistance.

9218.2 Denial of Continued Assistance. The HCV/HOAP may exercise the right to deny a family continued homeownership assistance when it relocates for one or more of the following reasons:

- (a) Lack of funding. The HCV/HOAP may deny permission to move with continued voucher assistance if the program does not have sufficient funding to provide continued assistance;
- (b) Non-compliance. If a family has not met the requirement of the program or their home owner obligations as outlined in the HCV/HOAP, Statement of Home Owner Obligations;
- (c) Fraud. If the family has committed fraud in connection with the DCHA, HCV/HOAP or any other PHA, federal or state assisted program.
- (d) Mortgage default. If the family has defaulted on their mortgage, they shall not be able to continue to receive HCV homeownership assistance.

9219 TRANSFERS FROM HOMEOWNERSHIP TO RENTAL ASSISTANCE

9219.1 Criteria for a Transfer. At DCHA's discretion, a family may be allowed to switch back from the HCV/HOAP to rental assistance under the Housing Choice Voucher Program, if the family meets the following criteria:

- (a) The participant family has not defaulted on a mortgage loan while participating in the DCHA HCV/HOAP;
- (b) The participant family has met all of its obligations while participating in the HCV/HOAP; and
- (c) The participant family sells the home and thereafter vacates the home; or
- (d) The family conveys the title to the home to HUD, an approved designee or representative of the lender, or to DCHA. The family shall sign a Conveyance Acknowledgment Notice, indicating the requirement to completely transfer and convey the property, and such notice shall be acceptable to the mortgage lender.

9219.2 Approval of Rental Voucher. If the family is approved for transfer from the HCV/HOAP, the Housing Choice Voucher Program shall issue the family a rental voucher and the family shall complete the normal voucher rental unit search process. During the period the family is searching for a rental unit, if no mortgage default has occurred and all other program requirements have been satisfied, the HCV/HOAP shall continue to provide the family with home ownership subsidy.

9219.3 Termination of all Assistance. If the family fails to transfer or convey the property as provided hereinabove, resulting in foreclosure of the property, the HCV/HOAP payment shall be terminated and the HCVP shall not provide the family with rental assistance. If a rental assistance lease has commenced, the Housing Choice Voucher Program shall terminate both the family Housing Choice Voucher and the rental assistance payment.

9219.4 No concurrent assistance. A family member who owns an interest in the home cannot receive both HCV/HOAP and rental assistance concurrently, except as provided in 9219.2 above.

9220 DCHA DENIAL OF PARTICIPATION IN THE HCV/HOAP

9220.1 DCHA reserves the right to deny home ownership assistance for the family for the following reasons:

- (a) The family does not meet the minimum employment and income requirements;
- (b) The family has defaulted on a mortgage loan in connection with the DCHA, HCV/HOAP;
- (c) The family has not complied with the requirements of the HCVP, and/or has failed to maintain the family obligations as required;
- (d) The family has committed fraud in connection with the HCVP; or
- (e) The family has any outstanding debt with DCHA or another Public Housing Authority.

9221 TERMINATION OF PARTICIPATION IN THE HCV/HOAP

9221.1 Home ownership subsidy for a family terminates automatically after the last housing assistance payment on behalf of the family.

9221.2 The HCV/HOAP may terminate a Participating Family's HOAP Subsidy for one or more of the following reasons:

- (a) The family has defaulted on a mortgage loan while participating in the DCHA HCV/HOAP;
- (b) The family has not complied with the requirements of the HCV/HOAP, and has failed to maintain the Home Owner Obligations as required under Section 9215, above;

- (c) The family has committed fraud in connection with the HCV/HOAP and/or the FSS program or HCV/HOAP;
- (d) The family moves from the home without prior consent of the HCV/HOAP;
- (e) The family has requested to be withdrawn from the HCV/HOAP;
- (f) The family moves outside of the jurisdiction of the HCV/HOAP;
- (g) A family member engages in violent or criminal activity or uses the home for illegal purposes; or
- (h) The family fails to adhere to the post-closing housing counseling requirement, without approval from the HCV/HOAP.

9221.3 If the HCV/HOAP proposes to terminate assistance payments to the family, the family has the right to request an Informal Hearing under Chapter 89 to appeal the decision to terminate.

9222 STATEMENT OF NON DISCRIMINATION

9222.1 DCHA shall administer and operate the HCV/HOAP without regard to race, religion, color, creed, sex, sexual orientation, family status, national origin, age, marital status, personal appearance, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Reasonable accommodations shall be afforded to any person with disabilities that would otherwise qualify for the program; provided that such assistance does not cause undo financial and/or administrative burdens to the HCV/HOAP.

9222.2 DCHA shall administer the HCV/HOAP in accordance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973.

9222.3 To ensure that families with disabilities are afforded reasonable accommodations, the HCV/HOAP shall utilize partnerships with community based organizations serving these populations for home buyer counseling and/or other related services when applicable.

9223 WAIVER

The Executive Director of DCHA may waive any provision of the governing regulations under this Chapter 92 that is not otherwise restricted in law, provided such waiver is in writing and sets forth the reasons why the waiver is in the best interests of the program.

Comments on these proposed regulations should be submitted, in writing, to Margaret McFarland,

General Counsel, 1133 North Capitol Street, NE, Washington, DC 20002, Suite 210, within twenty one (21) days of the date of publication of this notice in the DC Register. Additional copies of these proposed rules are available from the above address.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of Sections 3(b) and 6(c) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-021.02(b) and 50-921.05(c)); and Mayor's Order 2003-11 (January 16, 2003), hereby gives notice of the intent to amend Chapter 12, "Bicycles, Motorized Bicycles, and Miscellaneous Vehicles," and Chapter 26, "Civil Fines for Moving and Non-Moving Infractions," of the Vehicles and Traffic Regulations (18 DCMR). The proposed amendments to Chapter 12 will update bicycle safety equipment guidelines in § 1204; eliminate the approval and sale of bicycle safety equipment in § 1205; enhance the authority of the Department to place bicycle racks in the public right-of-way in §1208; and set forth a process for removing abandoned bicycles from the public space in § 1210. The proposed amendments to Chapter 26 will increase the civil fines for bicycle infractions that do not involve bicycle registration to twenty-five dollars (\$25.00). Final rulemaking action to adopt these amendments shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 18 DCMR, Chapter 12 is amended to read as follows:

A. Subsections 1204.1 through 1204.4 are amended to read as follows:

- 1204.1 Each bicycle shall be equipped with a brake which enables the operator to cause the braked wheels to skid on dry, level, clean pavement. Fixed gear bicycles are not required to have a separate brake, but the operator shall be able to stop the bicycle using the pedals and cause the wheels to skid on dry, level, clean pavement.
- 1204.2 Each bicycle, when in use at night, shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet (500 ft.) to the front and with a red or amber reflector on the rear which shall be visible from all distances from fifty feet (50 ft.) to three hundred feet (300 ft.) to the rear when directly in front of upper beams of head lamps on a motor vehicle.
- 1204.3 A lamp emitting a red or amber light visible from a distance of five hundred feet (500 ft.) to the rear may be used in lieu of the red or amber reflector.
- 1204.4 In place of the requirements of §1204.2, a lamp may be worn on the body of an operator; provided, that it may be readily seen from the distances set forth in that subsection.

B. Section 1205, **APPROVAL AND SALE OF BICYCLE SAFETY EQUIPMENT**, is deleted in its entirety.

C. Subsection 1208.2 is amended to read as follows:

- 1208.2 An application for a bicycle rack permit shall be signed by the owner of the abutting property and filed with the Mayor. This subsection shall not apply to permits obtained by the Mayor.

D. Section 1210 is amended to read as follows:

1210 REMOVAL OF BICYCLES FROM PUBLIC SPACE

- 1210.1 Any bicycle left unused in public space for more than thirty (30) days shall be considered abandoned. The Director may remove an abandoned bicycle after placing notice on the bicycle for a period of at least ten (10) days. The Director shall attempt to identify and contact the owner of a registered bicycle prior to removing it from public space.
- 1210.2 Bicycles removed from public space that are in working order may be auctioned off to the highest bidder or given free-of-charge to minors as part of a bicycle recreation, safety, or responsibility program. Bicycles that are not in working order may be disposed of as solid waste.

E. Subsections 1210.3 and 1210.4 are deleted in their entirety.

Title 18 DCMR, Chapter 26, Section 2602, **BICYCLE INFRACTIONS**, is amended to read as follows:

- 2602.1 The following civil infractions and their respective fines set forth in this section refer to bicycles and the operation of bicycles. The fine for any bicycle violation not listed in this section is twenty-five dollars (\$25.00).

<u>INFRACTION (DCMR Citation)</u>	<u>FINE</u>
Carrying objects which prevent operator from keeping one hand on handle bars (§1201.6)	\$25.00
Excessive number of riders (§1201.5)	\$25.00
Failure to register bicycle (§1202.1)	\$5.00
Furnishing false information (§1202.8)	\$5.00
Hazardous driving (§1201.2)	\$25.00
Hitching on vehicle (§1201.16)	\$25.00
Impeding or obstructing traffic (§1201.3)	\$25.00
Improper equipment (§1204)	\$25.00
Improper Securing of Bicycle (§1209)	\$25.00

Mounting rack violation (§1206)	\$25.00
Not riding on seat (§1201.4)	\$25.00
Operating an unregistered bicycle (§1201.2)	\$5.00
Removing registration plate or number (§1202.1)	\$5.00
Renting an unregistered bicycle (§1207.7)	\$5.00
Riding on sidewalk where not permitted (§1201.9)	\$25.00
Riding abreast, obstructing traffic (§1201.7)	\$25.00
Right-of-way, failure to yield (§1201.10ff)	\$25.00
Sounding of warning device (§§1201.14; 1204.7)	\$25.00
Speed, excessive (§1201.8)	\$25.00
Traffic control device, disobeying (§1201.15)	\$25.00

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments, in writing, with: Jim Sebastian, District Department of Transportation, Transportation Policy and Planning Administration, 2000 14th Street, NW, 7th Floor, Washington, D.C. 20009. Comments must be received no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Copies of this proposal may be obtained, at cost, by writing to the above address.

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 04-72-TS

The Acting Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4002, "TRUCK RESTRICTIONS" Subsection 4002.1, (a) Northwest Section, is amended by adding the following to the list of locations where truck restrictions are installed:

"On Corcoran Street, N.W., between 16th and 17th Streets".

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty days (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009 (Attention: Docket 04-72-TS). Copies of this proposal are available, at cost, by writing to the above address.